

# No. 16-1186

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

JAMES G. PAULSEN, Regional Director of Region 29 of the  
National Labor Relations Board, for and on behalf of the  
NATIONAL LABOR RELATIONS BOARD,

Petitioner-Appellant,

v.

CSC HOLDINGS, LLC and CABLEVISION SYSTEMS CORP.

Respondent-Appellee.

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ON APPEAL FROM AN ORDER OF THE UNITED STATES  
DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

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JOINT APPENDIX  
VOLUME V of V  
(Pages 1038-1262)

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<sup>1</sup> On May 5, 2016, pursuant to Federal Rules of Appellate Procedure, Rule 30 and Local Rule 30.1, the Director (through its counsel) sent joint appendix designations to the Company’s counsel. The Director designated approximately 468 pages of the 1,997 page administrative record in this case. On May 24, 2016, the Company (through its counsel) counter-designated the entirety of the 1,997 page administrative record for inclusion in the joint appendix.



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# **Exhibit A11**

## **R-53**



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

DOROTHEA PERRY,

Plaintiff,

-against-

NEW YORK LAW SCHOOL and  
COLLEGIS, INC.,

Defendants.

STATE OF NEW YORK )  
COUNTY OF NEW YORK)

DOC # 15

03 Civ. 9221 (GBD)

**AFFIDAVIT IN OPPOSITION  
TO MOTION TO DISMISS OR  
TO COMPEL ARBITRATION**

Exh. No: 153 Received \_\_\_\_\_ Rejected \_\_\_\_\_

Case No.: \_\_\_\_\_

Case Name: ES

No. Pgs: \_\_\_\_\_ Date: 12/28/15 Rep: GBM

DOROTHEA PERRY, being duly sworn, deposes and says as follows:

1. I am the plaintiff in the above captioned action, and as such am fully familiar with the facts and circumstances thereof.

2. I make this affidavit in opposition to defendant COLLEGIS'S instant motion to dismiss this action, or in the alternative, to suspend these proceedings and compel arbitration of these claims.

3. I was employed by defendant Collegis, from November 1, 1997 through October 22, 2002, when I was terminated due to alleged job performance (Exhibit A, annexed hereto).

4. I was a plaintiff in an action commenced in the Supreme Court of the State of New York, County of New York, by the filing of a Summons and Complaint on January 9, 2003<sup>1</sup>, in the office of the County Clerk, New York County (Exhibit "3" to the 11/24/03 affidavit of Cleatus J. Simmons, in support of the instant motion).

<sup>1</sup> Said Summons states, in apparent error, that it was filed on January 9, "2002", a date that precedes the date of the aggrieved terminations of the plaintiffs in said action.



5. The aforesaid State court action arose out of my employment and termination by defendant Collegis, and as to Collegis, alleged solely that my employment termination was in retaliation for reporting a New York Law School professor's involvement in child pornography, in violation of New York City Human Rights Law.

6. By a Decision and Order, dated October 21, 2003, the Supreme Court, New York County, dismissed plaintiffs' aforescribed claim against Collegis for failure to state a cause of action, pursuant to Civil Practice Law and Rules, Section 3211(a)(7), and severed the remaining cause of action against New York Law School for tortious interference with contract (Exhibit "4" to Simmons affidavit).

7. The instant action was commenced in the Supreme Court of the State of New York, New York County, by the filing of the Summons and Complaint on October 21, 2003 in the office of the Clerk of New York County (Exhibit "1" to Simmons affidavit), alleging *inter alia*, "First" through "Fourth" causes of action: racial animus and retaliation (distinct from the retaliation alleged in the January, 2003 complaint) against affiant because of her race and prior protected activity under Title VII of the Civil Rights Act of 1964, as amended, concerning New York Law School and Collegis, in violation of Title VII, New York Executive Law and New York City Human Rights Law; and violations of the federal Fair Labor Standards Act and New York Labor Law, "Sixth" and "Seventh" causes of action.

8. In or about, early November, 2003, my former counsel and I each received copies of a Demand for Arbitration, dated November 5, 2003, (with a copy of the Collegis Employment Agreement, dated 11/7/97 and the January, 2003 Summons and Complaint), from counsel for defendant Collegis (Exhibit B, annexed hereto).



9. On November 20, 2003, defendants New York Law School and Collegis, removed the instant action to this Court from the New York State Supreme Court.

10. Upon information and belief, under a letter dated November 24, 2003, the American Arbitration Association rejected and returned the aforescribed November 5, 2003 Demand for Arbitration, due to Collegis's failure to complete the filing requirements, as it had been advised to do on November 12, 2003 (Exhibit C, annexed hereto).

11. To this date, neither affiant, nor upon advise from her former attorney, has he been served with a valid Demand for Arbitration, within 300 calendar days of the time (January 9, 2003) "when the demanding party knows or should have known of the event or events giving rise to the claim." (See Exhibit B, paragraph "11")

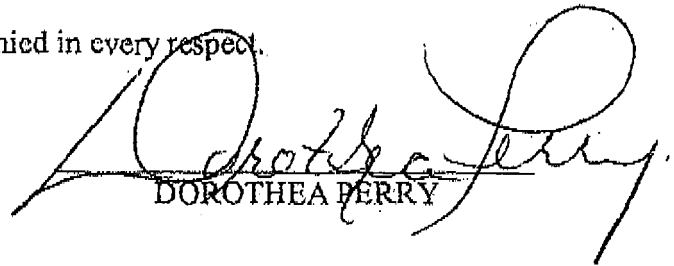
12. Defendant Collegis's default in timely demanding arbitration notwithstanding, (paragraph "11," *supra*) the arbitration provision in the subject Employment Agreement between Collegis and affiant, provides that "The parties shall share equally all costs of arbitration excepting their own attorneys fees (unless and to the extent ordered by the arbitrator(s) to pay the attorneys fees of the prevailing party)" (Exhibit B, paragraph "11").

13. Upon information and belief, the American Arbitration Association Filing and Case Fees for this matter, will be substantial and beyond affiant's ability to pay a one- half share of the same, pursuant to the aforestated terms of the Employment Agreement (See Exhibit D, AAA National Rules for Resolution of Employment Disputes, re arbitrator, filing and case fees).

14. Due to my unstable employment status after my termination by Collegis, I am in arrears and/or default on approximately \$45,000.00 in personal debts, excluding my monthly living expenses of approximately \$4,000.00.



WHEREFORE, defendant's motion to dismiss this action or in the alternative, to suspend these proceedings and compel arbitration, should be denied in every respect.

  
DOROTHEA PERRY

Sworn and subscribed to before me this  
6<sup>th</sup> day of May, 2004

  
Notary Public

LAWRENCE S. CUMBERBATCH  
NOTARY PUBLIC, State of New York  
No. 02CU4860554  
Qualified in Kings County  
Commission Expires May 05, 06



**EXHIBIT**







**HUMAN RESOURCES**

October 22, 2002

Dorothea Perry

Dear Dorothea:

As was discussed with you, your employment with Collegis will be terminated due to job performance effective October 22, 2002.

As a result, you are entitled to the following benefits:

- A standard severance agreement has been enclosed for your review. You are being provided 7 days to consider this agreement and are encouraged to consult with legal counsel prior to executing this agreement. The severance will be paid to you as soon as administratively possible following the date of termination, assuming receipt of your executed agreement and expiration of the revocation period. Please return the signed, original agreement to my attention.
- You are entitled to apply for unemployment at your local unemployment office.
- Any accrued, unused vacation will be paid out following the receipt of an approved final timesheet. Vacation accrues at 1.25 days per month (full-time accrual).
- You have certain rights to elect the continuation of insurance benefits by making timely notification and payments. A COBRA package will be sent to your home via certified mail which will include more information, including the costs. Benefit coverage remains in tact through January 31, 2003.
- Your rights regarding the monies in your 401(k) account will also be forwarded to you in the package mentioned above. You may wish to seek the advice of a tax expert regarding the disposition of the funds in your 401(k) account.

The Human Resources staff is available to you for any questions that you may have throughout this transition. Should I be of further assistance to you, please let me know. My direct number is (888) 472-6553 x2240 or email at [mpeters@collegis.com](mailto:mpeters@collegis.com).

Sincerely,

Collegis, Inc.

Maggie Peters  
Manager, Human Resources

Enclosures

2300 Mattland Center Parkway - Suite 340 - Maitland, FL 32751

JA1044



**EXHIBIT**

B



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SEATTLE, WA  
STAMFORD, CT  
WASHINGTON, DC  
WHITE PLAINS, NY

November 5, 2003

Louis Pechman, Esq.  
Berke-Weiss & Pechman LLP  
488 Madison Avenue  
New York, New York 10022

Re: Collegis, Inc. v. Perry

Dear Mr. Pechman:

Enclosed is a Demand for Arbitration filed with the American Arbitration Association. If you have any questions, please call.

Very truly yours,

JACKSON LEWIS LLP



Mark S. Mancher

MSM:pav  
Enclosure

cc: Ms. Dorothea Perry (w/enclosure)

I:\Clients\C\64417-Collegis\Correspondence\Ltr to Pechman enc arb demand.doc



## AMERICAN ARBITRATION ASSOCIATION

## EMPLOYMENT ARBITRATION RULES

## DEMAND FOR ARBITRATION

**MEDIATION** is a nonbinding process. The mediator assists the parties in working out a solution that is acceptable to them. If you would like the AAA to contact the other parties to determine whether they wish to mediate this matter, please check this box. ☐  
There is no additional administrative fee for this service.

TO: Name Dorothea Perry	Name of Representative (if known) Louis Pechman	Name of Firm (if applicable) Berke-Weiss & Pechman
----------------------------	--	---

Address 74 Tapscott Street			Representative's Address 488 Madison Avenue		
City Brooklyn	State New York	Zip Code 11212	City New York	State New York	Zip Code 10022
Phone No.	Fax No.		Phone No. 212-583-9500	Fax No. 212-308-8582	

The named claimant, a party to an arbitration agreement or program which provides for arbitration under The Employment Arbitration Rules of the American Arbitration Association, hereby demands arbitration.

## THE NATURE OF THE DISPUTE

Ms. Dorothea Perry filed a lawsuit against claimant on January 9, 2003 (copy attached) relating to a dispute concerning the termination of her employment. Plaintiff filed an additional lawsuit on October 21, 2003, also relating to a dispute concerning her employment and the termination of her employment (copy attached). Claimant has moved to dismiss the January 9, 2003 lawsuit before the New York Supreme Court. Claimant seeks to arbitrate claims asserted in the complaint filed on January 9, 2003, to the extent the claims are not dismissed by the Court or as a result of the action of any appellate court, and the claims asserted in the complaint filed on October 21, 2003.

## THE CLAIM OR RELIEF SOUGHT (the amount, if any)

Dismissal of claims asserted in complaint filed by Ms. Perry on January 9, 2003 and October 21, 2003, costs and attorneys' fees.

DOES THIS DISPUTE ARISE OUT OF AN EMPLOYMENT RELATIONSHIP? Yes ☒ No ☐

WHAT WAS/IS THE EMPLOYEE'S ANNUAL WAGE RANGE? Note: this question is required by California law.

☒ Less than \$100,000 ☐ \$100,000 - \$250,000 ☐ Over \$250,000

Claimant ☐ Employee ☒ Employer

Respondent ☒ Employee ☐ Employer

## HEARING LOCALE REQUESTED

You are hereby notified that copies of our arbitration agreement and this demand are being filed with the American Arbitration Association at its New York office, with a request that it commence administration of the arbitration. Under the rules, you may file an answering statement within ten days after notice from the AAA.

Signature (may be signed by representative) <i>Mark S. Mancher</i>	Title Attorney	Date 11-5-03
---	-------------------	-----------------

Name of Claimant Collegis, Inc.	Name of Representative Mark S. Mancher	Name of Firm (if applicable) Jackson Lewis LLP
------------------------------------	---	---

Address (to be used in connection with this case) 2300 Maitland Center Parkway, Suite 340			Representative's Address 1000 Woodbury Road		
City Maitland	State Florida	Zip Code 32751	City Woodbury	State New York	Zip Code 11797
Phone No.	Fax No.		Phone No. 516-364-0404	Fax No. 516-364-0466	

TO BEGIN PROCEEDINGS, PLEASE SEND TWO COPIES OF THIS DEMAND AND THE ARBITRATION AGREEMENT, WITH THE FILING FEE AS PROVIDED FOR IN THE RULES, TO THE AAA. SEND THE ORIGINAL DEMAND TO THE RESPONDENT.



## EMPLOYMENT AGREEMENT

*PK* THIS EMPLOYMENT AGREEMENT ("Agreement"), made and entered into as of November 1, 1997, by and between COLLEGIS, a Delaware Corporation with its principal place of business at 2300 Maitland Center Parkway, Suite 340, Maitland, Florida 32751 ("Corporation") and Dorothea Perry ("Employee"), residing at \_\_\_\_\_.

WHEREAS, the Corporation is engaged in the business of providing services related to computing and information technology throughout the United States of America, and its principal competitors similarly are engaged in business nationally;

WHEREAS, Employee desires to be employed by the Corporation and the Corporation desires to avail itself of the services of Employee and to employ Employee under circumstances in which Employee will learn, develop and have access to confidential information of the Corporation;

NOW THEREFORE, in consideration of the premises and mutual covenants contained herein, and each intending to be legally bound hereby, the parties agree as follows:

*RCB* 1. *PK* Employment. Subject to the terms of this Agreement, the Corporation hereby employs Employee to perform such duties as may be assigned to him or her by the Corporation, effective November 1, 1997 for a term of one year, unless terminated in accordance herewith. If neither party provides notice thirty (30) days prior to the termination of this Agreement, then the Agreement will be considered renewed for successive one year periods. Employee hereby accepts such employment and agrees to serve the Corporation on a full-time basis and to perform his or her duties faithfully, diligently and to the best of his or her ability.

2. Compensation. The Corporation agrees to pay Employee, and Employee agrees to accept from the Corporation, in full payment for Employee's services hereunder, compensation consisting of the following:

- (a) a salary based on an annual rate of \$42,378 payable at least monthly in equal installments; and
- (b) the standard benefits the Corporation makes available from time to time to employees of the Corporation in accordance with the terms of applicable benefit plans.

3. Expenses. The Corporation agrees to reimburse Employee for such of his or her out-of-pocket expenses as may be determined by the Corporation to be reasonable necessary in connection with services rendered by Employee pursuant to this Agreement.

4. Termination. Either party may terminate this Agreement: (a) without cause for any legal reason whatsoever, or for no reason, by providing the other party two weeks prior written notice of termination. If this Agreement is terminated pursuant to such written notice, the Corporation shall have no further obligation under this Agreement, except the obligation to pay



Employee an amount equal to the portion of his or her compensation and out-of-pocket business expenses as defined in paragraph 3 as may be accrued and unpaid on the date of termination; (b) for cause, the Corporation, however, shall have the right to terminate the employment of Employee under this Agreement at anytime, without notice, for cause, which includes, but is not limited to, failure to perform, dishonest conduct in the performance of his or her duties, incompetence, insubordination, gross negligence, violation of any express direction, violation of any rule or regulation established by the Corporation from time to time or breach of any covenant contained in this Agreement. If Employee is terminated for cause, the Corporation shall have no further obligation under this Agreement, except the obligation to pay Employee an amount equal to the portion of his or her compensation and out-of-pocket business expenses as defined in paragraph 3 as may be accrued and unpaid on the date of termination.

5. Termination Upon Death. If Employee dies, this Agreement shall terminate without notice on the date of his or her death without further obligation on the part of the Corporation, except the obligation to pay the executor or personal representative of Employee an amount equal to the portion of his or her compensation and out-of-pocket business expenses as defined in paragraph 3 as may be accrued and unpaid on the date of his or her death.

6. Trade Secrets and Confidential Information: Corporation Property. Employee shall treat as trade secrets all confidential information acquired by him or her during his or her employment, including but not limited to, customer lists, marketing and financial information, personnel, sales and processes and methods, as well as other information with respect to the various techniques, procedures, processes and methods, as well as other information used or developed in the business of the Corporation or related to the Corporation, and shall not use any such confidential information for his or her own benefit nor disclose it, or any part of it, to any other person, firm, corporation, or organization not connected with the Corporation, except as authorized in writing by the Corporation. All documents and other materials made, compiled by or made available to Employee during the course of his or her employment and any copies thereof, whether or not they contain confidential information, are and shall be the exclusive property of the Corporation and shall be delivered to the Corporation by Employee immediately upon the termination of this Agreement.

All ideas, reports, inventions, improvements, discoveries, formulas and other creative works made or developed by Employee during the period of his or her employment by the Corporation and relating to any business in which the Corporation does or shall engage during such period, shall promptly be disclosed to the Corporation and shall be the sole property of the Corporation. Employee hereby assigns and transfers to the Corporation all of his or her right, title and interest in and to any such ideas, reports, inventions, improvements, discoveries, formulas and other creative works, and agrees, upon the request of the Corporation, to execute and deliver to the Corporation all documents and to do all other acts that, in the opinion of the Corporation, are necessary or desirable to secure to the Corporation, its successors, assigns or nominees, all right, title and interest in and to any such ideas, reports, inventions, improvements, discoveries, formulas or other creative works, including but not limited to, applications for letters patent issued by the United States or any other country.

7. Non-competition.



(a) Employee agrees that during the period of his or her employment under this Agreement and for a period of one (1) year after termination of employment, Employee shall not, in any way, for his or her own account or for the account of any person, firm, corporation or organization engaged in the same or similar business as the Corporation, directly or indirectly through others, sell or solicit, contact, serve or cater to any person, firm, corporation or other organization that is or was a customer or prospective customer of the Corporation, during the term of this Agreement, regardless of the time when said customer or prospective customer became a customer or prospective customer of the Corporation.

(b) Employee agrees that during the period of his or her employment under this Agreement and for a period of one (1) year after termination of employment, Employee shall not directly or indirectly contact or attempt to persuade any agent or employee of the Corporation to terminate his or her relationship with the Corporation, nor do any act that may result in the impairment of the relationship between the Corporation and its agents or employees.

(c) Employee agrees that during the period of his or her employment under this Agreement, Employee shall not render financial assistance to any person, firm, corporation or organization engaged in any aspect of the business in which the corporation is engaged, other than the Corporation or a successor or successors; provided however, that nothing contained herein shall prevent Employee from holding for investment no more than one percent (1%) of any class of securities of a company that has its securities traded on a national securities exchange, nor from holding any equity securities that Employee held as of the date of this Agreement.

Notwithstanding anything contained herein to the contrary, during the period of one (1) year after termination of employment, the covenants contained in subparagraph 7(a) shall restrict Employee only with respect to any aspect of the business in which the Corporation was engaged in at the time of termination of Employee's employment.

8. Previous Employment Agreement. Employee represents and warrants that he or she is not, to the best of Employee's knowledge and belief, under any legal restraint or restriction that would prevent or make unlawful the execution of this Agreement or his or her performing the obligations under this Agreement and that Employee has disclosed to the Corporation any restraints, confidentiality commitments or employment restrictions that Employee has with any prior employer.

9. Remedies. Employee agrees and acknowledges that a breach on the part of the Employee of the covenants contained in paragraphs 6 or 7 will cause irreparable damage to the Corporation, and that it is and will be impossible to estimate or determine the damage that will be suffered by the Corporation in the event of a breach of Employee of any such covenant. Employee, therefore further agrees that the Corporation shall be entitled as a matter of course to specific performance and temporary and permanent injunctive relief from any court of competent jurisdiction restraining any future breach of any such covenant by Employee, his or her employers, employees, partners, agents or other associates, or any of them, without the necessity of proving actual damage to the Corporation by reason of any such breach. The right of the Corporation to specific performance or injunctive relief is to be cumulative to whatever other remedies the Corporation may have in the event of any such breach. Such covenants shall be



severable, and if the same be held invalid by reason of the length of time, area covered, activity covered or any or all of them, such length of time, area covered, activity covered or any or all of them, shall be reduced to the extent necessary to cure such invalidity.

10. Non-discrimination. The Corporation agrees to comply with all applicable laws, regulations, or ordinances governing this employment, including but not limited to Title VII of the Civil Rights Act, the Age Discrimination in Employment Act, the Americans with Disabilities Act, and the Older Workers Benefit Protection Act, and their state or local counterparts, if any. The Corporation agrees not to discriminate against the Employee with regard to any term or condition of employment on the basis of race, color, national origin, religion, sex, age (40 and above), or non-job related handicap or disability. The Employee agrees not to discriminate in any decision affecting or relating to the terms and conditions of employment of any other employee of Corporation.

11. Arbitration of Disputes. All disputes arising out of or concerning the interpretation or application of this Agreement, including without being limited to any claims that the application of this Agreement or the termination of the employment relationship established by this Agreement violates any federal, state, or local law, regulation, or ordinance (including but not limited to those set forth in paragraph 10 above), shall be resolved timely and exclusively by arbitration pursuant to the Rules of the American Arbitration Association (AAA), except as provided above in paragraph 9 as it relates to paragraphs 6 and 7. Arbitration must be demanded within three hundred (300) calendar days of the time when the demanding party knows or should have known of the event or events giving rise to the claim. The arbitration opinion and award shall be final and binding on the parties and enforceable by any court of competent jurisdiction. The parties shall share equally all costs of arbitration excepting their own attorneys fees (unless and to the extent ordered by the arbitrator(s) to pay the attorneys fees of prevailing party).

The parties recognize that this paragraph means that certain claims will be tried before an impartial arbitrator or panel of arbitrators instead of before a court and/or a jury, but desire the many benefits of arbitration over court proceedings, including speed of resolution, lower costs and fees, and more flexible rules of evidence. The arbitrator or arbitrators duly selected pursuant to the AAA Rules shall have the same power and authority to order any remedy for violation of a statute, regulation, or ordinance, as a court would have; and shall have the same power to order discovery as a federal district court has under the Federal Rules of Civil Procedure.

This clause is intended by the parties to be enforceable under the Federal Arbitration Act. Should it be determined by any court of competent jurisdiction that the Act does not apply, then it shall be enforceable under the arbitration statute of the state of Pennsylvania.

12. Assignment. Neither the Corporation nor the Employee shall have the right to assign this Agreement or any obligation hereunder without the written consent of the other, except that in connection with the merger, consolidation or liquidation of the Corporation or in connection with the sale or transfer of all or substantially all of the assets of the Corporation.

13. Notices. Any notice required or permitted to be give by this Agreement shall be in writing and shall be sufficiently given to the parties if delivered in person or sent by United



States registered mail, return receipt requested, postage prepaid, addressed to the respective parties at the following addresses as may from time to time be designated in writing by the parties.

If to Employee:

Dorothea Perry  
\_\_\_\_\_  
\_\_\_\_\_

If to the Corporation:

Robert S. Cominsky  
VP, Human Resources and Recruiting  
COLLEGIS  
2300 Maitland Center Parkway, Suite 340  
Maitland, FL 32751

14. Entire Agreement. This Agreement sets forth the entire agreement between the parties with respect to the matters contained herein, and supersedes all other agreements, representations, or understandings. No waiver or amendment to this Agreement shall be effective unless reduced to writing and executed by the parties hereto.

15. Controlling Law. This Agreement shall be executed in the State of Florida and shall be construed and applied in accordance with the laws of the State of Florida.

IN WITNESS WHEREOF, this Agreement has been duly executed by and on behalf of the parties hereto as a sealed instrument as of the day and year first above written.

COLLEGIS, INC.

By:   
On behalf of COLLEGIS

Date: 11/7/97

COLLEGIS



# EXHIBIT (Complaint)



SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

\_\_\_\_\_  
DOROTHEA PERRY and ROBERT GROSS,

Plaintiffs,

-against-

COLLEGIS, INC. and NEW YORK LAW SCHOOL,

\_\_\_\_\_  
Defendants.

Index No. 03/600064

SUMMONS

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the Complaint in this action and to serve a copy of your Answer, or, if the Complaint is not served with this Summons, to serve a Notice of Appearance, on the Plaintiffs' Attorney(s) within 20 days after the service of this Summons, exclusive of the day of service, or within 30 days after completion of service where service is made in any manner other than by personal delivery within the State. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.

New York County is designated as the place of trial on the basis of the fact that defendant New York Law School resides within said County.

Dated: New York, New York  
January 8, 2003

Summons Filed: January 9, 2002

BERKE-WEISS & PECHMAN LLP

By: 

Louis Pechman  
488 Madison Avenue  
New York, New York 10022  
(212) 583-9500  
Attorneys for Plaintiffs



SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

DOROTHEA PERRY and ROBERT GROSS,

Plaintiffs,

-against-

NEW YORK LAW SCHOOL and COLLEGIS, INC.,

Defendants.

Index No. 03/600064

COMPLAINT

Plaintiffs Dorothea Perry ("Perry") and Robert Gross ("Gross"), by their attorneys, Berke-Weiss & Pechman LLP, complaining of defendants New York Law School ("NYLS") and Collegis, Inc. ("Collegis") alleges as follows:

INTRODUCTION

1. Until they discovered child pornography on the computer of Professor Edward Samuels on June 3, 2002, Dorothea Perry and Robert Gross were lauded for their first rate performance supporting the computer users at New York Law School. But they blew the whistle on Professor Samuels -- for 26 years a well-liked instructor at NYLS. After their report of child pornography, Perry and Gross were transformed in a matter of weeks from being "excellent" employees to employees who seemingly could do nothing right, and within four months of their discovery, Perry and Gross were terminated for alleged "performance" problems. The real reason that plaintiffs were terminated, however, was because of their discovery of and complaints about the child pornography on Professor Samuels' computer, as they set into motion an embarrassing, and very public condemnation of perhaps the most well-known professor at NYLS.



2. So while Professor Samuels, the individual who brought "kiddie porn" into the workplace at NYLS is on a paid leave from his duties as he awaits his criminal prosecution, Perry and Gross are out on the street without a job. Despite their dedicated service to NYLS, Perry and Gross were fired because they exercised their right and complied with their moral obligation to complain about the offensive child pornography on Professor Samuels' computer. This lawsuit is brought to remedy the defendants' discriminatory and tortious acts.

### THE PARTIES

#### Dorothea Perry

3. Dorothea Perry resides at 74 Tappcott Street, Brooklyn, New York 11212.

#### Robert Gross

4. Robert Gross resides at 72 McLaughlin Street, Staten Island, New York 10305.

#### New York Law School

5. NYLS, one of the oldest independent law schools in the United States, was founded in 1891. NYLS has approximately 1,400 students and over 400 employees. NYLS is located at 57 Worth Street, New York, New York 10013.

#### Collegis

6. Collegis provides technology and management services to various colleges and universities, including NYLS. Collegis' headquarters is located at 2300 Maitland Center Parkway, Suite 340, Maitland, Florida 32751.



## FACTS

### Perry's Work Performance Prior to the Discovery of the Child Pornography

7. Perry began work at NYLS in April of 1990 as a Coordinator of User Services. Her responsibilities included the support of all hardware, software and communications needs for users at NYLS. From approximately 1990 to 1994, she provided these services exclusively to faculty members.

8. In November of 1997, the computer support function at NYLS was contracted out to Collegis, and Perry commenced employment for Collegis.

9. Perry received an overall rating of "Excellent" for her annual Performance Review covering the period from November 1, 1997 to November 1, 1998. Abe Baggen ("Baggen"), Executive Director, concluded that "Dorothea has been a strong influence in holding the user services department together during a very difficult period which culminated in the termination of one employee and another leaving because of the hostile environment created by the person who was terminated." The Performance Review also had the following specific ratings:

- "Excellent" rating on Job Knowledge/Technical Expertise: "Dorothea has a very good knowledge of the NYLS Desktop Environment. Dorothea excels at getting work done within the Law School Culture. She consistently chooses and prioritizes the tasks most important to the client and her management."
- "Outstanding" rating on Productivity: "Dorothea has consistently been the most productive employee in User Services. During a difficult period of staff turnover, she carried most of the workload of the department."
- "Excellent" rating on Customer Focus: "Dorothea works well with the staff of the school. She checks back with customers to verify their satisfaction with her work."



- "Excellent" rating on Communication: "Dorothea is direct and forthright in her communications. She keeps customers and management informed. In team settings, she is often the one who will bring up and face critical and difficult issues that are impeding progress."
- "Excellent" rating on Professional Qualities: "Dorothea is a seasoned professional. She recognizes when and where it is important to provide extra effort and is consistently willing to do so. She has the potential to grow into a technical managerial role."

10. Perry received an overall rating of "Excellent" on her annual Performance Review covering the period from November 1, 1998 to November 1, 1999. Executive Director Baggen's review concluded: "Dorothea has taken on the management and oversight of the student help desk. She has become a reliable resource to the Executive Director, taking on large projects with little or no ongoing supervision." The Performance Review also had the following specific ratings:

- "Excellent" rating on Job Knowledge/Technical Expertise: "Dorothea knows the Windows/Office/Word Perfect Environment very well. She has become one of our most consistent users of remote control using manage wise."
- "Outstanding/Excellent" rating on Productivity: "Dorothea has stayed late and come in on weekends on many occasions to complete projects. She has developed good working relationships with staff to make the most efficient use of time."
- "Outstanding" rating on Customer Focus: "Dorothea has become our best example of personal customer service. She anticipates customers demands and acts to meet them before they become problems."
- "Excellent" rating on Communication, commenting: "Dorothea consistently enters and documents her activities and project status to users of management."

11. For the period of November 1, 1999 to November 1, 2000, Perry received an overall rating of "Excellent" on her Annual Review. Margaret Perley, Executive Director ("Perley"), who wrote the review, concluded that: "Dorothea is a valued



employee whose technical expertise is respected and appreciated. Her background knowledge of New York Law School has been very helpful to me in resolving many problems here." The Performance Review also had the following specific ratings:

- "Outstanding" rating on Job Knowledge/Technical Expertise: "Dorothea is an intelligent, resourceful employee whose technical knowledge covers many areas. She is a wonderful source for New York Law School history as it pertains to the Office of Information Technology."
- "Excellent" rating on Productivity: "Dorothea performs well in solving problems of a technical nature and her highest productivity seems to be when she is under the pressure of a deadline."
- "Excellent" rating on Customer Focus: "Dorothea is responsive to requests for service and devotes a great deal of her time in trying to satisfy customer demands. She is proactive in resolving problems that she senses are potentially explosive."
- "Fully Competent" rating on Communication: "Dorothea is well-liked by her team mates. She frequently contributes ideas and information in staff planning sessions. She communicates well through e-mail."
- "Fully Competent" rating on Professional Qualities: "Dorothea performs well in planning and prioritizing her work load. She works well without supervision and is adaptable to most changes. She frequently contributes ideas and information in staff planning sessions. She communicates well through email."

12. Perry received an overall rating of "Excellent" for her annual Performance Review covering the period of November 1, 2000 through November 1, 2001. ✓  
Executive Director Parley concluded that: "Dorothea is a valued employee who has a firm understanding of PC technology. She is well-liked by her colleagues and the client." The Performance Review also had the following specific ratings:

- "Outstanding" rating on Job Knowledge/Technical Expertise: "Dorothea has a thorough understanding of the skills necessary to perform as a PC technician. She has, on more than one occasion, saved the day for the OIT department."



- "Excellent" rating on Productivity: "Dorothea is an expert in her field in solving PC-related problems and is often required to work under pressure."
- "Excellent" rating on Customer Focus: "Dorothea gets along with most of the faculty and staff at NYLS."
- "Fully Competent" rating on Communication: "Dorothea works well with all of her colleagues."
- "Fully Competent" rating on Professional Qualities: "Dorothea has excellent decision making skills and very successfully plans and prioritizes her work load."

13. Perry consistently received merit-based pay raises and performance incentive plan bonuses during the course of her employment with Collegis. Perry's salary at the time of her termination had risen to \$55,094.00. Her last raise was 4%, effective November 1, 2001.

**Gross' Outstanding Record of Performance  
Prior to the Discovery of the Child Pornography**

14. Gross was hired as a Technical Support Specialist by Collegis on February 1, 2001.

15. Prior to beginning employment with Collegis, Gross worked for Merrill Lynch as a Network Administrator from November 2000 to January 2001, where he was responsible for crisis management and a network with over 2,000 NT servers and 30,000 NT clients. Gross' prior employment experience also included an assignment with G.E. Capital in the area of Desktop Support as Field Technician.

16. Gross' responsibilities at NYLS included the support of all hardware, software and communications needs for users.

17. On May 15, 2002, Gross received an overall rating of "Fully Competent Plus" on his annual Performance Review covering the period February 1, 2001 to



February 1, 2002. Executive Director Perley concluded: "Rob had a steep learning curve when he came to New York Law School a year ago. He has come a long way in stepping up to the plate. He has not always had someone available to help him with his orientation of the academic environment and has had to get much of it on his own. In recent months, he seems to have taken hold of the situation and progressed by leaps and bounds. I believe he will do well this year and take his place with his peers. He has good technical skills and is learning better ways of applying them here. With some improvement on his organizational skills, Rob should have no problem getting an excellent rating next review." The Performance Review also had the following specific ratings:

- "Fully Competent" rating on Job Knowledge/Technical Expertise: "Rob has a firm grasp of PC technology and is very willing to learn as the technology changes ... He has made significant progress in the past few months."
- "Fully Competent" rating on Productivity: "Rob has good problem solving skills and is required to work under pressure most of the time due to the heavy log of help desk calls from users."
- "Excellent" rating on Customer Focus: "Rob puts a lot of effort into making the customer happy and is very quick to respond to their calls. He gets along well with everyone and has received many compliments on his courteous manner from both faculty and administrators."

18. On February 1, 2002, Gross received a \$1,050.00 merit-based salary increase from Collegis.

#### *The Discovery of the Child Pornography*

19. Professor Samuels was hired as a Professor at NYLS in 1976. Professor Samuels taught Bankruptcy Law, Contracts and Copyright Law at NYLS.



20. On June 2, 2002, Perry worked on Professor Samuel's computer after he reported problems at his office computer at NYLS. Professor Samuel reported to the Help Desk that he thought he had a virus.

21. Professor Samuel was a well-liked instructor for 26 years at the School, and a nationally known expert on copyright law, and who in 2000 published "The Illustrated Story of Copyright."

22. On June 3, 2002, Perry instructed Gross to backup Professor Samuel's computer in preparation of giving him a new computer because she feared his existing computer would experience a crash. In the course of doing the backup, Gross found child pornography on Professor Samuel's computer and reported it to Perry.

23. Upon finding the child pornography, Perry reported this discovery to Executive Director Ferley. Ferley protested that the images were not of children and that she didn't think it was an issue. Perry insisted, however, that the images were of children.

24. Ferley reported the child pornography to Fred DeJohn, Associate Dean of Finance and Administration, who was responsible for the onsite supervision of Collegis.

25. On June 7, 2002, at around 11:05 p.m., Perry emailed Ferley the following message:

With regards to the issue we've uncovered, I didn't realize just how serious this situation was. I thought it was rather disgusting and reported it to you based on my sense of right and wrong. My conscience. Of course now I've done further investigation. This is really hard to believe. That's all I can say.

26. Later that same evening, Perry emailed Ferley the following message:

I think for our protection the information should be purged from our server. If you've burned a copy and submitted it



to the lawyers, and that has in fact taken place, there is no need for us to store that information. We may somehow become guilty of doing exactly what we've reported. Possessing and distributing child porn. Come Monday, we should remove it. Please give me your opinion. Thank you.

27. On or about June 13, 2002, Perley had a meeting with Gross and Perry regarding Professor Samuels. Perley told them that she had been in contact with the District Attorney and that he didn't think there was enough to prosecute Professor Samuels and that the issue would probably be dropped. Perry complained to Perley that the FBI should also have been contacted. Perley asked Perry why was she so upset. Perry stated because it was a crime and that Professor Samuels shouldn't be allowed to get away with this.

28. On June 17, 2002, Perry made the following official report to Perley about the discovery of child pornography on Professor Samuels' computer:

On Friday, May 31 at approximately 4:00 p.m., Professor Samuels placed a call into the help desk that he thought he had a virus.

On Sunday, June 2, I worked on the user's machine from about 2:30 - 4:30. I uninstalled and reinstalled Command Anti-Virus. Once I restarted his computer, his machine began operating very erratically. I experienced several memory dumps. The machine also reported an invalid system disk. When I checked the CMOS, no hard drive was reported. I left the user a note that we would continue working on his machine on Monday.

On Monday, June 3, I requested that Rob Gross attempt to install Windows XP over the Windows 2000. He too experienced the memory dumps. Rob created another partition on the failing hard drive and installed Windows XP onto that partition. During the course of installing the software he again began to experience memory dumps. Rob reported the problem to me and I advised him to bring the machine in to be immediately



backed up. The user had lost data in the past and I didn't want to risk him losing any data.

During the course of backing up his data, Rob discovered files in the "My music" folder. It is customary for our staff to back up all user data, e.g. documents, music (mpg, wav, etc.), pictures (jpg, bmp). Rob looked further into the my music folder because another folder appeared imbedded in that folder, "Nime", within that folder "Nime2". In order to determine if these folders needed to be backed up Rob had to examine the contents of the folder. Upon his examination he observed what appeared to be child pornography. Rob requested that I take a look at it to be sure. From the appearance (face and body) of the young women, it certainly appeared without a doubt to be children.

I told Rob to leave the computer, and report it to Margaret. Rob requested that I make the report.

When you returned from your meeting I requested that you take a visual inspection of the contents of the Nime2 folder because I believed it was child pornography. Although at first you doubted whether they were children you informed us that you would report the information to Fred DeJohn.

This concludes my report.

#### **The Reprimands of Perry and Gross After Their Report of the Child Pornography**

29. On June 20, 2002, the New York City Police Department executed a warrant to search Professor Samuel's office computer.

30. On June 20, 2002, Perry received a "probation letter," the first disciplinary action she had ever received in her more than twelve (12) years of work at NYLS. Perley placed Perry on "probation" for 60 days. The letter accused Perry of four problems (1) tardiness, (2) excessive personal phone usage, (3) having visitors at her office cubicle, and (4) dressing too provocatively.

31. At around the same time that Perry was receiving her probation letters, Associate Dean DeJohn escorted two men in to pick up Professor Samuel's computer.



32. On June 20, 2002, Perry wrote the following email to Maggie Peters ("Peters"), Collegis' Manager of Human Resources:

Dear Maggie:

I tried to get in touch with you to discuss some issues that I think Human Resources can help to resolve. My livelihood is being threatened and I need to know where I stand. Collegis has always been this phantom company and only because I've been to the corporate headquarters do I know the company exists.

I've been so frightened to call for help. I feel so victimized and abused. I feel like a child feels when he's been abused by someone he/she trusts. Scared. Confused. Afraid to call for help.

One co-worker made this comment today, "we all feel like committing suicide." That may or may not be an exaggerated statement.

I will if you like fly to Florida to see you.  
Please let me know.

33. Perry received a reply email from Peters stating that she was busy and would call Perry later that same day but Peters never did bother to call Perry.

34. On July 16, 2002, one week after his return from vacation, Gross received a "probation letter" for alleged performance issues concerning alleged tardiness, failure to respond to a help desk call, and failure to know ghosting procedures.

35. On or about August 1, 2002, Perry went to the Federal Bureau of Investigation ("FBI") at 26 Federal Plaza and spoke with FBI Agent Allen Reichter. Perry told Reichter about what had been discovered and voiced her concern that no apparent action had been taken. Reichter directed Perry to the Manhattan District Attorney's office to see if a case was pending. That day, Perry went to the District Attorney's office on White Street and was told that there was no record of a pending case against



Professor Samuels in the computer system. Perry went back to Reichter and said nothing was in the system at the DA's office. At that point, Reichter asked for statements from Perry and Gross which Perry then gave to him. Gross also provided a compact disc of the child pornography to Reichter that same day.

36. On August 14, 2002, Professor Samuels was arrested on two counts of possessing child pornography, based on images of naked girls ranging in age from three to thirteen which were found on his computer. Press reports of his arrest disclosed that thousands of images were found on Professor Samuels' home computer upon the execution of a search warrant.

37. On August 15, 2002, NYLS Dean and President Richard A. Matasar issued the following public statement:

I was saddened to learn this afternoon that our colleague, Professor Edward Samuels, was arrested on charges relating to possession of child pornographic images. Consistent with our belief in the basic legal principle of the presumption of innocence to which all are entitled, and recognizing that the legal process must take its course, the Law School has placed Professor Samuels on paid administrative leave so that he may attend to his defense. He has secured counsel.

Our hearts go out to Ed and his family as they face the difficult time ahead. We are hopeful and a speedy and just resolution of this matter.

38. On August 15, 2002, one day after his highly publicized arrest – which specifically indicated that the technicians reported him – Professor Samuels was invited to use Perley's office computer even though it was in the same area where Perry and Gross worked.

39. On August 18, 2002, Perry emailed the following complaint to Perley about Professor Samuels' use of the office computer:



Since I have your attention, you should know that we techs that reported Professor's Samuel's possession of child pornography were very very afraid, confused, and nervous to have him sitting in your office for 5 hours on Friday. It was the most uncomfortable situation I have faced in a long time. Even if the Dean did say that Samuels should use your computer, we would have felt better if he had used someone else's machine. Professor Samuels has a lot to lose, his freedom, his livelihood, his family. Who can attest for the his mental state? Our security is the most lax anywhere. who can say that he doesn't have a vendetta against the techs and won't come in and slay us? You could have give him a laptop and had him sit in the library with it. Or even in his own office. That was cruel.

40. On September 13, 2002, Perry received a letter from Dennis Moynihan ("Moynihan"), Vice President of Collegis, extending her probation another 60 days. With respect to the four performance issues which were raised on June 22, 2002 Moynihan acknowledged that "your compliance is acceptable."

41. Despite Perry's full compliance with the June 20 probation letter, Moynihan extended Perry's probation, alleging new performance problems. Although Moynihan was not witness to any of the alleged performance issues, he accused Perry of (1) not complying with directives issued by Executive Director Perley, (2) not "fully, accurately, and proactively" communicating with Executive Director Perley, and (3) being "combative." None of these accusations had any validity, and, instead, smacked of a supervisor looking for ways to nitpick and discredit an employee.

42. On October 1, Perley attended a meeting with Associate Dean DeJohn. Upon her return from this meeting, Perley advised Gross that his probation would be extended another 60 days, even though all the alleged performance issues that had been raised in his July 15 Warning were bogus.



43. On October 16, 2002, Professor Samuel's had a hearing in Criminal Court New York.

44. On October 22, 2002, Perry and Gross were terminated by Moynihan and Perley. Perry protested that she was a single mother with an eight year old son, but her protest fell on deaf ears.

**FIRST CAUSE OF ACTION**  
(Retaliation Under the  
New York City Human Rights Law) ✓

45. Plaintiffs hereby reallege each allegation contained in paragraphs 1 through 45 as if fully set forth herein.

46. Defendants are individually, and jointly, an "employer" within the meaning of the New York City Human Rights Law ("Human Rights Law").

47. Section 8-107(7) of the Human Rights Law contains the following prohibition against retaliation:

It shall be an unlawful discriminatory practice for any person engaged in any activity to which this chapter applied to retaliate or discriminate in any manner against any person because such person has (i) opposed any practice forbidden under this chapter, (ii) filed a complaint, testified or assisted in any proceeding under this chapter, (iii) commenced a civil action alleging the commission of an act which would be an unlawful discriminatory practice under this chapter, (iv) assisted the commission or the corporation counsel in an investigation commenced pursuant to this title, or (v) provided any information to the commission pursuant to the terms of a conciliation agreement made pursuant to Section 8-115 of this chapter.

48. Child pornography in the workplace is forbidden by the Human Rights Law.

49. Defendants discriminated against plaintiffs in violation of the Human Rights Law by, *inter alia*, disciplining and terminating plaintiffs in retaliation for their



complaints about the child pornography they found on Professor Samuels' computer and because Perry made a prior complaint against NYLS.

50. As a result of defendants' discriminatory acts, plaintiffs have suffered and will continue to suffer substantial losses, including loss of past and future earnings and other employment benefits, and has suffered other monetary damages and compensatory damages for, *inter alia*, mental anguish, emotional distress, humiliation and loss of reputation.

51. Defendants acted intentionally and with malice and reckless indifference to plaintiffs' rights under the Human Rights Law and are thereby liable to plaintiffs for punitive damages under the Human Rights Law.

52. Prior to the filing of this Complaint, plaintiffs served a copy of this Complaint upon the New York City Commission on Human Rights and the Corporation Counsel of the City of the New York in accordance with N.Y.C. Admin. Code § 8-502(c). ✓

**SECOND CAUSE OF ACTION**  
**(Tortious Interference with Contract) ✓**

53. Plaintiffs hereby reallege each allegation contained in paragraphs 1 through 53 as if fully set forth herein.

54. An employment relationship existed between plaintiffs and defendant Collegis.

55. Defendant NYLS intentionally interfered with and maliciously induced defendant Collegis to terminate the employment relationships that existed.

56. Defendants acted with the sole purpose of harming plaintiffs and/or used dishonest, unfair or improper means.



57. The employment relationships between plaintiffs and defendant Collegis were terminated due to defendants' tortious interference.

58. As a result of defendants' tortious acts, plaintiffs have suffered and will continue to suffer substantial losses, including loss of past and future earnings and other employment benefits, and has suffered other monetary damages and compensatory damages for, *inter alia*, mental anguish, emotional distress, humiliation and loss of reputation.

59. Defendants acted intentionally and with malice and reckless indifference to plaintiffs' rights and are thereby liable to plaintiffs for punitive damages.

#### PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully request that this Court enter a judgment

(a) declaring that the acts and practices complained of herein are in violation of the Human Rights Law;

(b) enjoining and permanently restraining these violations of the Human Rights Law;

(c) directing such affirmative action as is necessary to ensure that the effects of these unlawful employment practices are eliminated and do not continue to affect plaintiffs' employment opportunities;

(d) directing defendants to reinstate plaintiffs in the position plaintiff would be in but for their discriminatory and unlawful acts, and to make plaintiffs whole for all earnings he would have received but for defendants' discriminatory and unlawful treatment, including, but not limited to, wages, health insurance and other fringe benefits, bonuses, pension, and other lost employment benefits;



(e) directing defendants to pay plaintiffs compensatory damages in the amount of five million dollars for, *inter alia*, mental anguish, emotional distress and humiliation;

(f) directing defendants to pay plaintiffs punitive damages in the amount of ten million dollars for their intentional disregard of and reckless indifference to plaintiffs' rights;

(g) awarding plaintiffs the costs of this action together with reasonable attorneys' fees; and

(h) awarding such other and further relief as this Court deems just and equitable.

Dated: New York, New York  
January 8, 2003

BERKE-WEISS & PECHMAN LLP

By: 

Louis Pechman  
488 Madison Avenue  
New York, New York 10022  
(212) 583-9500  
Attorneys for Plaintiffs



**EXHIBIT**

C





**American Arbitration Association**  
*Dispute Resolution Services Worldwide*

Catherine Shanks  
Vice President, Northeast Case Management Center  
Christopher Fracassa, Yvonne Nelson  
Assistant Vice President  
950 Warren Avenue, East Providence, RI 02914  
telephone: 866-283-4053 facsimile: 401-425-6526  
internet: <http://www.adr.org/>

**FAX**

Date: November 24, 2003

To  
Louis Pechman, Esq.  
Berke-Weiss & Pechman  
488 Madison Avenue  
New York, NY 10022

Fax Number: 212-308-8582

From: Barbara McGinn for Jodie L. Waterman

Number of Pages: 2 (including cover)

Re: 13 460 02914 03  
Collegis, Inc.  
and  
Dorothea Perry

MESSAGE: RETURN FILING

THIS FAX TRANSMISSION IS INTENDED ONLY FOR THE USE OF THE PERSON TO WHOM IT IS ADDRESSED. IT MAY CONTAIN INFORMATION THAT IS CONFIDENTIAL, PRIVILEGED OR OTHERWISE EXEMPT FROM DISCLOSURE. IF YOU ARE NOT THE INTENDED RECIPIENT OR THE PERSON AUTHORIZED TO DELIVER THIS FAX TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION OF THIS FAX IS PROHIBITED. IF YOU HAVE RECEIVED THIS FAX IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE AT THE NUMBER LISTED ABOVE AND RETURN THE ORIGINAL FAX TO US BY FIRST CLASS MAIL AT THE ABOVE ADDRESS.

JA1073





**American Arbitration Association**  
*Dispute Resolution Services Worldwide*

November 24, 2003

Mark S. Mancher  
Jackson Lewis LLP  
1000 Woodbury Road  
Woodbury, NY 11797

Louis Pechman, Esq.  
Berke-Weiss & Pechman  
488 Madison Avenue  
New York, NY 10022

Re: 13 460 02914 03  
Collegis, Inc.  
and  
Dorothea Perry

Catherine Shanks  
Vice President, Northeast Case Management Center  
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560 Warren Avenue, East Providence, RI 02914  
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Internet: <http://www.adr.org>

**Via Certified Mail**  
7001 2510 0009 0936 5082

**Via Facsimile**

Dear Parties:

On November 12, 2003 we advised that the filing requirements for the above matter had not been satisfied. The Association cannot maintain files for incomplete cases. Inasmuch as the filing requirements are still not complete, we herewith return to Mark S. Mancher, the original filing and its attachments including check # 512 in the amount of \$375.00.

We hope that the parties have settled their dispute. If the matter is still pending, please resubmit when you are able to provide all the requisite information and the filing fee. If you have questions about the filing requirements, please visit our website at: [www.adr.org](http://www.adr.org) or feel free to call me.

Sincerely,

Jodie L. Waterman  
Case Manager  
401 431 4799  
[Watermanj@adr.org](mailto:Watermanj@adr.org)

Jacqueline N. Pelphrey  
Supervisor  
401 431 4817  
[Pelphreyj@adr.org](mailto:Pelphreyj@adr.org)



**EXHIBIT**

D





## News / Events

## Archives



## Rules

[http://www.adr.org/index2\\_1.cfm?TSPeaid=157478-TSD&-----load=TUTNOYR00000](http://www.adr.org/index2_1.cfm?TSPeaid=157478-TSD&-----load=TUTNOYR00000)



32. Extensions of Time
33. Serving of Notice
34. The Award
35. Modification of Award
36. Release of Documents for Judicial Proceedings
37. Judicial Proceedings and Exclusion of Liability
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39. Expenses
40. Neutral Arbitrator's Compensation
41. Deposits
42. Interpretation and Application of Rules

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Hearing Room Rental  
Suspension for Nonpayment

##### For Individually-Negotiated Employment Agreements and Contracts

Administrative Fee  
Fees  
Hearing Room Rental

##### For Disputes Proceeding Under the Supplementary Rules for Class Action Arbitration ("Supplementary Rules")

#### EMPLOYMENT MEDIATION RULES

1. Agreement of Parties
2. Initiation of Mediation
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4. Appointment of Mediator
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#### MEDIATION FEE SCHEDULE

##### Introduction

Federal and state laws reflecting societal intolerance for certain workplace conduct, as well as court interpreting and applying those statutes, have redefined responsible corporate practice and employee relations. Increasingly, employers and employees face workplace disputes involving alleged wrongful termination, sexual harassment, or discrimination based on race, color, religion, sex, national origin, disability.

As courts and administrative agencies become less accessible to civil litigants, employers and their employees now see alternative dispute resolution ("ADR") as a way to promptly and effectively resolve workplace disputes. ADR procedures are becoming more common in contracts of employment, personnel manuals and employee handbooks. Increasingly, corporations and their employees look to the American Arbitration Association as a resource in developing prompt and effective employment procedures for employment-related disputes.

These rules have been developed for employers and employees who wish to use a private alternative to resolve their disputes, enabling them to have complaints heard by an impartial person with expertise in the employment field. These procedures benefit both the employer and the individual employee by making it possible to resolve disputes without extensive litigation.



### Role of the American Arbitration Association

The American Arbitration Association, founded in 1926, is a not-for-profit, public service organization dedicated to the resolution of disputes through mediation, arbitration, elections, and other voluntary resolution procedures. Over 4,000,000 workers are now covered by employment ADR plans administered by the AAA.

In addition, the AAA provides education and training, specialized publications, and research on all forms of dispute settlement. With 36 offices worldwide and cooperative agreements with arbitral institutions in 110 nations, the American Arbitration Association is the nation's largest private provider of ADR services.

For seventy-five years, the American Arbitration Association has set the standards for the development of equitable dispute resolution procedures. The development of the *National Rules for the Resolution of Employment Disputes*, and the reconstitution of a select and diverse roster of expert neutrals to hear and resolve disputes, are the most recent initiatives of the Association to provide private, efficient and cost-effective procedures for out-of-court settlement of workplace disputes.

### Legal Basis of Employment ADR

Since the beginning of this decade, Congress has twice reaffirmed the important role of ADR in the area of employment discrimination – in the Americans with Disabilities Act in 1990, and a year later in Section 5 of the Civil Rights Act in 1991. While technically not dealing with a contract of employment, the seminal case dealing with the arbitration of disputes relating to the non-union workplace is *Gilmer v. Interstate/Johnson Lane*, 500 U.S. 20, 111 S.Ct. 1647 (1991). The Supreme Court refused to invalidate Gilmer's agreement with the New York Stock Exchange that he would arbitrate disputes with his employer (Interstate/Johnson Lane) simply because he was obliged to sign it in order to work as a securities dealer whose trades were listed on the Exchange. Although the *Gilmer* Court found that the Age Discrimination in Employment Act did not preclude arbitration of age discrimination claims, it specifically declined to decide whether employment arbitration agreements were the type of "contracts of employment" which are not made enforceable by the Federal Arbitration Act.

Since *Gilmer*, lower federal courts have generally enforced employer-imposed ADR programs, as long as the programs are fair. Some courts have held that the employee must have received adequate notice of the program. However, the issue of binding arbitration programs that are a condition of employment is giving rise to litigation.

### The Fairness Issue: The Due Process Protocol

The *Due Process Protocol for Mediation and Arbitration of Statutory Disputes Arising Out of the Employment Relationship* was developed in 1995 by a special task force composed of individuals representing management, labor, employment, civil rights organizations, private administrative agencies, government, and the American Arbitration Association. The *Due Process Protocol*, which was endorsed by the Association in 1995, seeks to ensure fairness and equity in resolving workplace disputes. The *Due Process Protocol* encourages mediation and arbitration of statutory disputes, provided there are due process safeguards. It conveys the hope that ADR will reduce delays caused by the huge backlog of cases pending before administrative agencies and the courts. The *Due Process Protocol* "recognizes the dilemma inherent in requiring an agreement to mediate and/or arbitrate statutory disputes" but does not take a position on whether an employer can require a pre-dispute, binding arbitration program as a condition of employment.

The *Due Process Protocol* has been endorsed by organizations representing a broad range of constituencies. They include the American Arbitration Association, the American Bar Association Labor and Employment Section, the American Civil Liberties Union, the Federal Mediation and Conciliation Service, the National Academy of Arbitrators, and the National Society of Professionals in Dispute Resolution. The National Employment Lawyers Association has endorsed the substantive provisions of the *Due Process Protocol*. It has been incorporated into the ADR procedures of the Massachusetts Commission Against Discrimination (MCAD) and into the *Report of the United States Secretary of Labor's Task Force on Excellence in State and Local Government*.

### AAA's Employment ADR Rules

On June 1, 1996, the Association issued *National Rules for the Resolution of Employment Disputes*. These rules reflected the guidelines outlined in the *Due Process Protocol* and were based upon the AAA's *Employment Dispute Resolution Rules*, which were developed by a committee of employment management and plaintiff attorneys, retired judges and arbitrators, in addition to Association executives. The rules were developed for employers and employees who wish to use a private alternative to resolve their disputes. The rules enabled parties to have complaints heard by an impartial person of their joint selection, with expertise in the employment field. Both employers and individual employees benefit by having employment disputes resolved without the costs and delay of litigation. The rules included procedures which ensure a fair process in both the mediation and arbitration of employment disputes. After a year of use, the rules



been amended to address technical issues.

## AAA's Policy on Employment ADR

The AAA's policy on employment ADR is guided by the state of existing law, as well as its obligation an impartial manner. In following the law, and in the interest of providing an appropriate forum for the resolution of employment disputes, the Association administers dispute resolution programs which it due process standards as outlined in its *National Rules for the Resolution of Employment Disputes* a *Due Process Protocol*. If the Association determines that a dispute resolution program on its face substantially and materially deviates from the minimum due process standards of the *National Rules Resolution of Employment Disputes* and the *Due Process Protocol*, the Association may decline to a cases under that program. Other issues will be presented to the arbitrator for determination.

## Notification

If an employer intends to utilize the dispute resolution services of the Association in an employment plan, it shall, at least 30 days prior to the planned effective date of the program: (1) notify the Association of its intention to do so; and (2) provide the Association with a copy of the employment dispute resolution plan. If an employer does not comply with this requirement, the Association reserves the right to decline its administrative services. Copies of all plans should be sent to the American Arbitration Association's Program Development, 335 Madison Avenue, New York, NY 10017; FAX: 212-716-5913.

## Designing an ADR Program

The guiding principle in designing a successful employment ADR system is that it must be fair in fact and perception. The American Arbitration Association has considerable experience in administering and in the design of employment ADR plans, which gives it an informed perspective on how to effectively design ADR systems, as well as the problems to avoid. Its guidance to those designing employment ADR is summarized as follows:

The American Arbitration Association encourages employers to consider the wide range of available options to resolve workplace disputes outside the courtroom.

A special emphasis is placed by the Association on encouraging the development of in-house resolution procedures, such as open door policies, ombuds, peer review, and internal mediation.

The Association recommends an external mediation component to resolve disputes not settled through internal dispute resolution processes.

- Programs which use arbitration as a final step may employ:

- pre-dispute, voluntary final and binding arbitration;
- pre-dispute, mandatory nonbinding arbitration;
- pre-dispute, mandatory final and binding arbitration; or
- post-dispute, voluntary final and binding arbitration.

- \* Although the AAA administers binding arbitration systems that have been required as a condition of initial or continued employment, such programs must be consistent with the Association's *National Resolution of Employment Disputes* and the *Due Process Protocol*.

Specific guidance on the responsible development and design of employment ADR systems is contained in the Association's publication, *Resolving Employment Disputes: A Practical Guide*, which is available from the AAA office.

### Alternative Dispute Resolution Options

**Open Door Policy:** Employees are encouraged to meet with their immediate manager or supervisor to discuss problems arising out of the workplace environment. In some systems, the employee is free to approach anyone in the chain of command.

**Ombuds:** A neutral third party (either from within or outside the company) is designated to confiden investigate and propose settlement of employment complaints brought by employees.



**Peer Review:** A panel of employees (or employees and managers) works together to resolve empic complaints. Peer review panel members are trained in the handling of sensitive issues.

**Internal Mediation:** A process for resolving disputes in which a neutral third person from within the trained in mediation techniques, helps the disputing parties negotiate a mutually acceptable settlement. Mediation is a nonbinding process in which the parties discuss their disputes with an impartial person assists them in reaching a settlement. The mediator may suggest ways of resolving the dispute but impose a settlement on the parties.

**Fact-Finding:** The investigation of a complaint by an impartial third person (or team) who examines complaint and the facts and issues a non-binding report. Fact-finding is particularly helpful for alleged sexual harassment, where a fact-finding team, composed of one male and one female neutral, investigates the allegations and presents its findings to the employer and the employee.

**Arbitration:** Arbitration is generally defined as the submission of disputes to one or more impartial for final and binding determination. It can be the final step in a workplace program that includes other resolution methods. There are many possibilities for designing this final step. They include:

**Pre-Dispute, Voluntary Final and Binding Arbitration:** The parties agree in advance, on voluntary basis, to use arbitration to resolve disputes and they are bound by the outcome.

**Pre-Dispute, Mandatory Nonbinding Arbitration:** The parties must use the arbitration to resolve disputes, but they are not bound by the outcome.

**Pre-Dispute, Mandatory Final and Binding Arbitration:** The parties must arbitrate unre disputes and they are bound by the outcome.

**Post-Dispute, Voluntary Final and Binding Arbitration:** The parties have the option of whether to use final and binding arbitration after a dispute arises.

#### Types of Disputes Covered

The dispute resolution procedures contained in this booklet can be inserted into an employee's personnel manual, an employment application or an individual employment agreement, or can be used for a specific dispute. They do not apply to disputes arising out of collective bargaining agreements.

#### NATIONAL RULES FOR THE RESOLUTION OF EMPLOYMENT DISPUTES

##### 1. Applicable Rules of Arbitration

The parties shall be deemed to have made these rules a part of their arbitration agreement whenever they have provided for arbitration by the American Arbitration Association (hereinafter "AAA") or under its *Rules for the Resolution of Employment Disputes*. If a party establishes that an adverse material inconsistency exists between the arbitration agreement and these rules, the arbitrator shall apply the

If, within 30 days after the Association's commencement of administration, a party seeks judicial intervention with respect to a pending arbitration, the Association will suspend administration for 60 days to permit the party to obtain a stay of arbitration from the court.

These rules, and any amendment of them, shall apply in the form obtaining at the time the demand for arbitration or submission is received by the AAA.

##### 2. Notification

An employer intending to incorporate these rules or to refer to the dispute resolution services of the Association's employment ADR plan, shall, at least 30 days prior to the planned effective date of the program:

- i) notify the Association of its intention to do so and,
- ii) provide the Association with a copy of the employment dispute resolution plan.

Compliance with this requirement shall not preclude an arbitrator from entertaining challenges as provided in Section 1. If an employer does not comply with this requirement, the Association reserves the right to suspend its administrative services.



### 3. AAA as Administrator of the Arbitration

When parties agree to arbitrate under these rules, or when they provide for arbitration by the AAA or arbitration is initiated under these rules, they thereby authorize the AAA to administer the arbitration. Authority and duties of the AAA are prescribed in these rules, and may be carried out through such of AAA's representatives as it may direct.

### 4. Initiation of Arbitration

Arbitration shall be initiated in the following manner.

a. The parties may submit a joint request for arbitration.

b. In the absence of a joint request for arbitration:

(i) The initiating party (hereinafter "Claimant(s)") shall:

(1) File a written notice (hereinafter "Demand") of its intention to arbitrate at any region of the AAA, within the time limit established by the applicable statute of limitations if the dispute involves statutory rights. If no statutory rights are involved, the time limit established by the applicable arbitration agreement shall be followed. Any dispute over such issues shall be referred to the arbitrator. The filing shall be made in duplicate, and each copy shall include the applicable arbitration agreement. The Demand shall set forth the names, addresses, and telephone numbers of the parties; a brief statement of the nature of the dispute; the amount in controversy, if any; the remedy sought; and requested hearing location.

(2) Simultaneously mail a copy of the Demand to the party (hereinafter "Respondent(s)").

(3) Include with its Demand the applicable filing fee, unless the parties agree to some other method of fee advancement.

(ii) The Respondent(s) shall file an Answer with the AAA within 10 days after the date of the letter from the AAA acknowledging receipt of the Demand. The Answer shall provide the Respondent's response to the claim and the issues presented. The Respondent(s) shall make its filing in duplicate with the AAA, and simultaneously shall mail a copy of the Answer to the Claimant.

(iii) The Respondent(s):

(1) May file a counterclaim with the AAA within 10 days after the letter from the AAA acknowledging receipt of the Demand. The filing shall be made in duplicate. The counterclaim shall set forth the nature of the claim, the amount in controversy, if any, and the remedy sought.

(2) Simultaneously shall mail a copy of any counterclaim to the Claimant.

(3) Shall include with its filing the applicable filing fee provided for by these rules.

(iv) The Claimant may file an Answer to the counterclaim with the AAA within 10 days after the date of the letter from the AAA acknowledging receipt of the counterclaim. The Answer shall include the Claimant's brief response to the counterclaim and the issues presented. The Claimant shall file its Answer in duplicate with the AAA, and simultaneously shall mail a copy of the Answer to the Respondent(s).

c. The form of any filing in these rules shall not be subject to technical pleading requirements.

### 5. Changes of Claim

Before the appointment of the arbitrator, if either party desires to offer a new or different claim or counterclaim, such party must do so in writing by filing a written statement with the AAA and simultaneously mailing a copy to the other party(s), who shall have 10 days from the date of such mailing within which to file an answer with the AAA. After the appointment of the arbitrator, a party may offer a new or different counterclaim only at the discretion of the arbitrator.

### 6. Administrative and Mediation Conferences



Before the appointment of the arbitrator, any party may request, or the AAA, in its discretion, may so administrative conference with a representative of the AAA and the parties and/or their representative purpose of the administrative conference is to organize and expedite the arbitration, explore its administrative aspects, establish the most efficient means of selecting an arbitrator, and to consider mediation as a resolution option. There is no administrative fee for this service.

At any time after the filing of the Demand, with the consent of the parties, the AAA will arrange a mediation conference under its Mediation Rules to facilitate settlement. The mediator shall not be any arbitrator appointed to the case, except by mutual agreement of the parties. There is no administrative fee for a mediation under AAA Mediation Rules for parties to a pending arbitration.

## 7. Discovery

The arbitrator shall have the authority to order such discovery, by way of deposition, interrogatory, document production, or otherwise, as the arbitrator considers necessary to a full and fair exploration of the issues in dispute, consistent with the expedited nature of arbitration.

## 8. Arbitration Management Conference

As soon as possible after the appointment of the arbitrator but not later than 60 days thereafter, the arbitrator shall conduct an Arbitration Management Conference with the parties and/or their representatives, in person or by telephone, to explore and resolve matters that will expedite the arbitration proceedings. The matters to be addressed include:

- (i) the issues to be arbitrated;
- (ii) the date, time, place and estimated duration of the hearing;
- (iii) the resolution of outstanding discovery issues and establishment of discovery parameters;
- (iv) the law, standards, rules of evidence and burdens of proof that are to apply to the proceedings;
- (v) the exchange of stipulations and declarations regarding facts, exhibits, witnesses and issues;
- (vi) the names of witnesses (including expert witnesses), the scope of witness testimony, witness exclusion;
- (vii) the value of bifurcating the arbitration into a liability phase and damages phase;
- (viii) the need for a stenographic record;
- (ix) whether the parties will summarize their arguments orally or in writing;
- (x) the form of the award;
- (xi) any other issues relating to the subject or conduct of the arbitration;
- (xii) the allocation of attorney's fees and costs.

The arbitrator shall issue oral or written orders reflecting his or her decisions on the above matters and may conduct additional conferences when the need arises.

There is no AAA administrative fee for an Arbitration Management Conference.

## 9. Location of the Arbitration

The parties may designate the location of the arbitration by mutual agreement. In the absence of such agreement before the appointment of the arbitrator, any party may request a specific hearing location by notifying the AAA in writing and simultaneously mailing a copy of the request to the other party(ies). If the request receives no objection within 10 days of the date of the request, the hearing shall be held at the requested location. If a timely objection is filed with the AAA, the AAA shall have the power to determine the location and its decision shall be final and binding. After the appointment of the arbitrator, the arbitrator shall



all disputes regarding the location of the hearing.

### 10. Date and Time of Hearing

The arbitrator shall have the authority to set the date and time of the hearing in consultation with the

## 11. Qualifications to Serve as Arbitrator and Rights of Parties to Disqualify Arbitrator

a. **Standards of Experience and Neutrality**

- (i) Arbitrators serving under these rules shall be experienced in the field of employment.
- (ii) Arbitrators serving under these rules shall have no personal or financial interest in results of the proceedings in which they are appointed and shall have no relation to the dispute or to the parties or their counsel that may create an appearance of bias.
- (iii) The roster of available arbitrators will be established on a non-discriminatory basis, by gender, ethnicity, background and qualifications.
- (iv) The Association may, upon request of a party or upon its own initiative, supplement proposed arbitrators in disputes arising out of individually negotiated employment contracts with persons from the regular Commercial Roster, to allow the Association to respond to the particular needs of the dispute. In multi-arbitrator disputes, at least one of the arbitrators shall be experienced in the field of employment law.

b. Standards of Disclosure by Arbitrator

Prior to accepting appointment, the prospective arbitrator shall disclose all information that relevant to the standards of neutrality set forth in this Section, including but not limited to s a neutral in any past or pending case involving any of the parties and/or their representative may prevent a prompt hearing.

c. **Disqualification for Failure to Meet Standards of Experience and Neutrality**

An arbitrator may be disqualified in two ways:

- (i) No later than 10 days after the appointment of the arbitrator, all parties jointly may challenge the qualifications of an arbitrator by communicating their objection to the AAA in writing. Upon receipt of a joint objection, the arbitrator shall be replaced.
- (ii) Any party may challenge the qualifications of an arbitrator by communicating its objection to the AAA in writing. Upon receipt of the objection, the AAA either shall replace the arbitrator or communicate the objection to the other parties. If any party believes that the objection does merit disqualification of the arbitrator, the party shall so communicate to the AAA and to the other parties within 10 days of the receipt of the objection from the AAA. Upon objection of a party to the service of an arbitrator, the AAA shall determine whether the arbitrator should be disqualified. The AAA shall inform the parties of its decision, which shall be conclusive.

## 12. Number and Appointment of Neutral Arbitrators

- a. If the parties do not specify the number of arbitrators, the dispute shall be heard and determined by one arbitrator. If the parties cannot agree upon the number of arbitrators, the AAA shall have the authority to determine the number of arbitrators.
- b. If the parties have not appointed an arbitrator and have not provided any method of appointing an arbitrator, an arbitrator shall be appointed in the following manner:
- (i) Immediately after it receives the Demand, the AAA shall mail simultaneously to each party a letter containing an identical list of the names of all arbitrators who are members of the regional Employment Dispute Resolution Roster.
- (ii) Each party shall have 10 days from the date of the letter in which to select the name of a mutually acceptable arbitrator to hear and determine their dispute. If the parties cannot agree on a mutually acceptable arbitrator, they shall so notify the AAA. Within 10 days of the receipt of the



notice, the AAA shall send the parties a shorter list of arbitrators who are members of the regional Employment Dispute Resolution Roster. Each party shall have 10 days from the date of the containing the revised list to strike any names objected to, number the remaining names in order of preference, and return the list to the AAA. If a party does not return the list within the time set, all of the listed persons shall be deemed acceptable to that party.

(iii) The AAA shall invite the acceptance of the arbitrator whom both parties have selected mutually acceptable or, in the case of resort to the ranking procedure, the arbitrator who has the highest rating in the order of preference that the parties have specified.

(iv) If the parties fail to agree on any of the persons whom the AAA submits for consideration mutually acceptable arbitrators are unable to act, or if for any other reason the appointment made from the list of persons whom the AAA submits for consideration, the AAA shall have the right to make the appointment from among other members of the Roster without the submission of additional lists.

### 13. Vacancies

If for any reason an arbitrator is unable to perform the duties of the office, the AAA may, on proof satisfactory to it, declare the office vacant. The vacancy shall be filled in accordance with applicable provisions of the Rules.

In the event of a vacancy in a panel of neutral arbitrators after the hearings have commenced, the remaining arbitrator or arbitrators may continue with the hearing and determination of the controversy, unless the parties agree otherwise.

### 14. Representation

Any party may be represented by counsel or other authorized representative. For parties without representation the AAA will, upon request, provide reference to institutions which might offer assistance. A party who intends to be represented shall notify the other party and the AAA of the name and address of the representative at least 10 days prior to the date set for the hearing or conference at which that person is to appear. If a representative files a Demand or an Answer, the obligation to give notice of representation status is deemed satisfied.

### 15. Stenographic Record

Any party desiring a stenographic record shall make arrangements directly with a stenographer and shall notify the other parties of these arrangements at least three days in advance of the hearing. The requesting party or parties shall pay the cost of the record. If the transcript is agreed by the parties, or determined by the arbitrator to be the official record of the proceeding, it must be provided to the arbitrator and made available to the other parties for inspection, at a date, time, and place determined by the arbitrator.

### 16. Interpreters

Any party wishing an interpreter shall make all arrangements directly with the interpreter and shall bear the costs of the service.

### 17. Attendance at Hearings

The arbitrator shall have the authority to exclude witnesses, other than a party, from the hearing during the testimony of any other witness. The arbitrator also shall have the authority to decide whether any person is not a witness may attend the hearing.

### 18. Confidentiality

The arbitrator shall maintain the confidentiality of the arbitration and shall have the authority to make appropriate rulings to safeguard that confidentiality, unless the parties agree otherwise or the law provides to the contrary.

### 19. Postponements

The arbitrator: (1) may postpone any hearing upon the request of a party for good cause shown; (2) may postpone any hearing upon the mutual agreement of the parties; and (3) may postpone any hearing on her own initiative.



## 20. Oaths

Before proceeding with the first hearing, each arbitrator may take an oath of office and, if required by law or by the arbitration agreement, shall do so. The arbitrator may require witnesses to testify under oath administered by any duly qualified person and, if it is required by law or requested by any party, shall do so.

## 21. Majority Decision

All decisions and awards of the arbitrators must be by a majority, unless the unanimous decision of the arbitrators is expressly required by the arbitration agreement or by law.

## 22. Order of Proceedings and Communication with Arbitrators

A hearing shall be opened by: (1) filing the oath of the arbitrator, where required; (2) recording the date and place of the hearing; (3) recording the presence of the arbitrator, the parties, and their representatives; and (4) receiving into the record the Demand and the Answer, if any. The arbitrator may, at the beginning of the hearing, ask for statements clarifying the issues involved.

The parties shall bear the same burdens of proof and burdens of producing evidence as would apply in claims and counterclaims had been brought in court.

Witnesses for each party shall submit to direct and cross examination as approved by the arbitrator.

With the exception of the rules regarding the allocation of the burdens of proof and going forward with evidence, the arbitrator has the authority to set the rules for the conduct of the proceedings and shall exercise that authority to afford a full and equal opportunity to all parties to present any evidence that the arbitrator deems material and relevant to the resolution of the dispute.

Documentary and other forms of physical evidence, when offered by either party, may be received in evidence by the arbitrator.

The names and addresses of all witnesses and a description of the exhibits in the order received shall be made a part of the record.

There shall be no ex parte communication with the arbitrator, unless the parties and the arbitrator agree in advance of the communication.

## 23. Arbitration in the Absence of a Party or Representative

Unless the law provides to the contrary, the arbitration may proceed in the absence of any party or representative who, after due notice, fails to be present or fails to obtain a postponement. An award shall be based solely on the default of a party. The arbitrator shall require the party who is in attendance to produce such evidence as the arbitrator may require for the making of the award.

## 24. Evidence

The parties may offer such evidence as is relevant and material to the dispute and shall produce such evidence as the arbitrator deems necessary to an understanding and determination of the dispute. A party or other person authorized by law to subpoena witnesses or documents may do so upon the order of any party or independently.

The arbitrator shall be the judge of the relevance and materiality of the evidence offered, and conforming with legal rules of evidence shall not be necessary. The arbitrator may in his or her discretion direct the proof, bifurcate proceedings, exclude cumulative or irrelevant testimony or other evidence, and direct parties to focus their presentations on issues the decision of which could dispose of all or part of the dispute. The evidence shall be taken in the presence of all of the arbitrators and all of the parties, except where a party is absent, in default, or has waived the right to be present.

## 25. Evidence by Affidavit or Declaration and Post-Hearing Filing of Documents or Other Evidence

The arbitrator may receive and consider the evidence of witnesses by affidavit, but shall give it only as much weight as the arbitrator deems it entitled to after consideration of any objection made to its admission.

If the parties agree or the arbitrator directs that documents or other evidence may be submitted to the



arbitrator after the hearing, the documents or other evidence shall be filed with the AAA for transmission to the arbitrator, unless the parties agree to a different method of distribution. All parties shall be afforded an opportunity to examine such documents or other evidence and to lodge appropriate objections, if any.

#### **26. Inspection or Investigation**

An arbitrator finding it necessary to make an inspection or investigation in connection with the arbitration shall direct the AAA to so advise the parties. The arbitrator shall set the date and time, and the AAA shall notify the parties. Any party who so desires may be present during the inspection or investigation. In the event that all parties are not present during the inspection or investigation, the arbitrator shall make an oral report to the parties and afford them an opportunity to comment.

#### **27. Interim Measures**

At the request of any party, the arbitrator may take whatever interim measures he or she deems necessary with respect to the dispute, including measures for the conservation of property.

Such interim measures may be taken in the form of an interim award and the arbitrator may require payment for the costs of such measures.

#### **28. Closing of Hearing**

The arbitrator shall specifically inquire of all parties whether they have any further proofs to offer or evidence to be heard. Upon receiving negative replies or if satisfied that the record is complete, the arbitrator shall declare the hearing closed.

If briefs are to be filed, the hearing shall be declared closed as of the final date set by the arbitrator for the receipt of briefs. If documents are to be filed as provided in Section 25 and the date set for their receipt is later than that set for the receipt of briefs, the later date shall be the date of closing the hearing. The time limit within which the arbitrator is required to make the award shall commence to run, in the absence of any agreement by the parties, upon closing of the hearing.

#### **29. Reopening of Hearing**

The hearing may be reopened by the arbitrator upon the arbitrator's initiative, or upon application of a party if cause shown, at any time before the award is made. If reopening the hearing would prevent the making of an award within the specific time agreed on by the parties in the contract(s) out of which the controversy has arisen, the matter may not be reopened unless the parties agree on an extension of time. When no such date is fixed in the contract, the arbitrator may reopen the hearing and shall have 30 days from the date of the reopened hearing within which to make an award.

#### **30. Waiver of Oral Hearing**

The parties may provide, by written agreement, for the waiver of oral hearings in any case. If the parties are unable to agree as to the procedure, the AAA shall specify a fair and equitable procedure.

#### **31. Waiver of Objection/Lack of Compliance with These Rules**

Any party who proceeds with the arbitration after knowledge that any provision or requirement of these Rules has not been complied with, and who fails to state objections thereto in writing, shall be deemed to have waived the right to object.

#### **32. Extensions of Time**

The parties may modify any period of time by mutual agreement. The AAA or the arbitrator may for good cause extend any period of time established by these Rules, except the time for making the award. It shall notify the parties of any extension.

#### **33. Serving of Notice**

Each party shall be deemed to have consented that any papers, notices, or process necessary or proper for the initiation or continuation of an arbitration under these Rules; for any court actions in connection therewith; or for the entry of judgment on an award made under these procedures may be served on a party by first-class mail addressed to the party or its representative at the last known address or by personal service, in or out of state where the arbitration is to be held.



The AAA and the parties may also use facsimile transmission, telex, telegram, or other written forms electronic communication to give the notices required by these Rules.

#### 34. The Award

a. The award shall be made promptly by the arbitrator and, unless otherwise agreed by the part specified by law, no later than 30 days from the date of closing of the hearing or, if oral hearings have waived, from the date of the AAA's transmittal of the final statements and proofs to the arbitrator.

b. An award issued under these rules shall be publicly available, on a cost basis. The names of parties and witnesses will not be publicly available, unless a party expressly agrees to have its name public in the award.

c. The award shall be in writing and shall be signed by a majority of the arbitrators and shall pro written reasons for the award unless the parties agree otherwise. It shall be executed in the manner by law.

d. The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable, in any remedy or relief that would have been available to the parties had the matter been heard in court. The arbitrator shall, in the award, assess arbitration fees, expenses, and compensation as provided in §§ 38, 39, and 40 in favor of any party and, in the event any administrative fees or expenses are due in favor of the AAA.

e. The arbitrator shall have the authority to provide for the reimbursement of representative's fee, whole or in part, as part of the remedy, in accordance with applicable law.

f. If the parties settle their dispute during the course of the arbitration, the arbitrator may set for terms of the settlement in a consent award.

g. The parties shall accept as legal delivery of the award the placing of the award or a true copy in the mail, addressed to a party or its representative at the last known address, personal service of the award, or the filing of the award in any manner that may be required by law.

h. The arbitrator's award shall be final and binding. Judicial review shall be limited, as provided

#### 35. Modification of Award

Within 20 days after the transmittal of an award, any party, upon notice to the other parties, may request the arbitrator to correct any clerical, typographical, technical or computational errors in the award. The arbitrator is not empowered to redetermine the merits of any claim already decided.

The other parties shall be given 10 days to respond to the request. The arbitrator shall dispose of the request within 20 days after transmittal by the AAA to the arbitrator of the request and any response thereto.

If applicable law requires a different procedural time frame, that procedure shall be followed.

#### 36. Release of Documents for Judicial Proceedings

The AAA shall, upon the written request of a party, furnish to the party, at that party's expense, certified copies of any papers in the AAA's case file that may be required in judicial proceedings relating to the arbitration.

#### 37. Judicial Proceedings and Exclusion of Liability

a. No judicial proceeding by a party relating to the subject matter of the arbitration shall be deemed a waiver of the party's right to arbitrate.

b. Neither the AAA nor any arbitrator in a proceeding under these rules is or shall be considered necessary or proper party in judicial proceedings relating to the arbitration.

c. Parties to these procedures shall be deemed to have consented that judgment upon the arbitration award may be entered in any federal or state court having jurisdiction.

d. Neither the AAA nor any arbitrator shall be liable to any party for any act or omission in connection with the arbitration.



with any arbitration conducted under these procedures.

### **38. Administrative Fees\***

As a not-for-profit organization, the AAA shall prescribe filing and other administrative fees to compensate for the cost of providing administrative services. The AAA administrative fee schedule in effect at the demand for arbitration or submission agreement is received shall be applicable.

AAA fees shall be paid in accordance with the Administrative Fee Schedule (see below).

The AAA may, in the event of extreme hardship on any party, defer or reduce the administrative fees to ensure that you have the most current information, see our Web site at [www.adr.org](http://www.adr.org).

\*Pursuant to Section 1284.3 of the California Code of Civil Procedure, consumers with a gross income of less than 300% of the federal poverty guidelines are entitled to a waiver of arbitration fees and costs, exclusive of arbitrator fees. This law applies to all consumer agreements subject to the Cal Arbitration Act, and to all consumer arbitrations conducted in California. Only those disputes arising under employer promulgated plans are included in the consumer definition. If you believe that you meet the requirements, you must submit to the AAA a declaration under oath regarding your monthly income and the number of persons in your household. Please contact the AAA's Western Case Management Center at 877-528-0879 if you have any questions regarding the waiver of administrative fees. (Effective January 1, 2003)

### **39. Expenses**

Unless otherwise agreed by the parties, the expenses of witnesses for either side shall be borne by the party producing such witnesses. All expenses of the arbitration, including required travel and other expenses of the arbitrator, AAA representatives, and any witness and the costs relating to any proof produced at the arbitration, shall be borne by the employer, unless the parties agree otherwise or unless the arbitrator directs otherwise in the award as provided for in the Administrative Fee Schedule.

### **40. Neutral Arbitrator's Compensation**

Arbitrators shall charge a rate consistent with the arbitrator's stated rate of compensation. If there is disagreement concerning the terms of compensation, an appropriate rate shall be established with the arbitrator by the AAA and confirmed to the parties.

Any arrangement for the compensation of a neutral arbitrator shall be made through the AAA and no direct payment shall be made between the parties and the arbitrator. Payment of the arbitrator's fees and expenses shall be made to the AAA from the fees and moneys collected by the AAA for this purpose.

### **41. Deposits**

The AAA may require deposits in advance of any hearings such sums of money as it deems necessary to cover the expenses of the arbitration, including the arbitrator's fee, if any, and shall render an account of the deposits and return any unexpended balance at the conclusion of the case.

### **42. Interpretation and Application of Rules**

The arbitrator shall interpret and apply these rules as they relate to the arbitrator's powers and duties. If there is more than one arbitrator and a difference arises among them concerning the meaning or application of these Rules, it shall be resolved by a majority vote. If that is not possible, either an arbitrator or a majority of the arbitrators shall refer the question to the AAA for final decision. All other procedures shall be interpreted and applied in accordance with the AAA.

## **ADMINISTRATIVE FEE SCHEDULE**

### **For Disputes Arising Out of Employer-Promulgated Plans:**

#### **Administrative Fee**

The AAA's administrative fees are based on filing and service charges. Arbitrator compensation is not included in this schedule. Unless the employee chooses to pay a portion of the arbitrator's compensation, such compensation shall be paid in total by the employer. Arbitrator compensation and administrative fees are not subject to reallocation by the arbitrator(s) except upon the arbitrator's determination that a claim



### Filing Fees

In cases before three or more arbitrators, a nonrefundable filing fee capped in the amount of \$125, is in full by the employee when a claim is filed, unless the plan provides that the employee pay less. A nonrefundable fee in the amount of \$1,375 is payable in full by the employer, unless the plan provides the employer pay more.

**There is no AAA hearing fee for the initial Arbitration Management Conference.**

A fee of \$250 is payable by a party causing a postponement of any hearing scheduled before a multi arbitrator panel.

### Suspension for Nonpayment

**For Disputes Arising Out of Individually-Negotiated Employment Agreements and Contracts:**

**Administrative Fee**

### Fees

[http://www.cdr.org/index2.asp?IDDocid=15747&IDProc=unload/1/VIEWCITE/DocId\\_Proced](http://www.cdr.org/index2.asp?IDDocid=15747&IDProc=unload/1/VIEWCITE/DocId_Proced)



If no hearings have occurred. However, if the Association is not notified at least 24 hours before the scheduled hearing, the case service fee will remain due and will not be refunded.

These fees will be billed in accordance with the following schedule:

Amount of Claim	Initial Filing Fee	Case Service Fee
Above \$0 to \$10,000	\$500	\$200
Above \$10,000 to \$75,000	\$750	\$300
Above \$75,000 to \$150,000	\$1,500	\$750
Above \$150,000 to \$300,000	\$2,750	\$1,250
Above \$300,000 to \$500,000	\$4,250	\$1,750
Above \$500,000 to \$1,000,000	\$6,000	\$2,500
Above \$1,000,000 to \$7,000,000	\$8,000	\$3,250
Above \$7,000,000 to \$10,000,000	\$10,000	\$4,000
No Amount Stated**	\$3,250	\$1,250

\*\* This fee is applicable only when a claim or counterclaim is not for a monetary amount. Where a claim amount is not known, parties will be required to state a range of claims or be subject to the highest possible filing fee.

#### Fee Schedule for Claims in Excess of \$10 Million

The following is the fee schedule for use in disputes involving claims in excess of \$10 million. If you have questions, please consult your local AAA office or case management center.

Claim Size	Fee	Case Service
\$10 million and above	Base fee of \$12,500 plus .01% of the amount of claim above \$10 million. Filing fees capped at \$65,000	\$6,000

Fees are subject to increase if the amount of a claim or counterclaim is modified after the initial filing. Fees are subject to decrease if the amount of a claim or counterclaim is modified before the first hearing.

The minimum fees for any case having three or more arbitrators are \$2,750 for the filing fee, plus a \$300 case service fee. Expedited Procedures are applied in any case where no disclosed claim or counterclaim exceeds \$75,000, exclusive of interest and arbitration cost.

Parties on cases held in abeyance for one year by agreement, will be assessed an annual abeyance fee of \$300. If a party refuses to pay the assessed fee, the other party or parties may pay the entire fee on all parties, otherwise the matter will be closed.

#### Refund Schedule

The AAA offers a refund schedule on filing fees. For cases with claims up to \$75,000, a minimum filing fee of \$300 will not be refunded. For all cases, a minimum fee of \$500 will not be refunded. Subject to the fee requirements, refunds will be calculated as follows:

- 100% of the filing fee, above the minimum fee, will be refunded if the case is settled or withdrawn within five calendar days of filing.
- 50% of the filing fee, in any case with filing fees in excess of \$500, will be refunded if the case is settled or withdrawn between six and 30 calendar days of filing. Where the filing fee is \$500, the refund will be \$200.
- 25% of the filing fee will be refunded if the case is settled or withdrawn between 31 and 60 calendar days of filing.

No refund will be made once an arbitrator has been appointed (this includes one arbitrator on a three arbitrator panel). No refunds will be granted on awarded cases.



Note: The date of receipt of the demand for arbitration with the AAA will be used to calculate refunds fees for both claims and counterclaims.

#### **Hearing Room Rental**

The fees described above do not cover the rental of hearing rooms, which are available on a rental basis. Check with the AAA for availability and rates.

#### **For Disputes Proceeding Under the Supplementary Rules for Class Action Arbitration ("Supplementary Rules"):**

The AAA's Administered Fee Schedule, as listed in Section 11 of the Supplementary Rules for Class Arbitration, shall apply to disputes proceeding under the Supplementary Rules.

### **EMPLOYMENT MEDIATION RULES**

#### **1. Agreement of Parties**

Whenever, by provision in an employment dispute resolution program, or by separate submission, the parties have provided for mediation or conciliation of existing or future disputes under the auspices of the Arbitration Association (hereinafter "AAA") or under these rules, they shall be deemed to have made rules, as amended and in effect as of the date of the submission of the dispute, a part of their agreement.

#### **2. Initiation of Mediation**

Any party to an employment dispute may initiate mediation by filing with the AAA a submission to mediate and a written request for mediation pursuant to these rules, together with the applicable administrative fee.

#### **3. Request for Mediation**

A request for mediation shall contain a brief statement of the nature of the dispute and the names, addresses, and telephone numbers of all parties to the dispute and those who will represent them, if any, in the mediation. The initiating party shall simultaneously file two copies of the request with the AAA and one copy with every other party to the dispute.

#### **4. Appointment of Mediator**

Upon receipt of a request for mediation, the AAA will appoint a qualified mediator to serve. Normally, the mediator will be appointed unless the parties agree otherwise or the AAA determines otherwise. If the agreement of the parties names a mediator or specifies a method of appointing a mediator, that designation or method shall be followed.

#### **5. Qualifications of Mediator**

No person shall serve as a mediator in any dispute in which that person has any financial or personal interest in the result of the mediation, except by the written consent of all parties. Prior to accepting an appointment, the prospective mediator shall disclose any circumstance likely to create a presumption of bias or conflict of interest to the parties at a prompt meeting with the parties. Upon receipt of such information, the AAA shall either replace the mediator or immediately communicate the information to the parties for their comments. In the event that the parties disagree as to whether the mediator shall serve, the AAA will appoint another mediator. The AAA is authorized to appoint another mediator if the appointed mediator is unable to serve promptly.

#### **6. Vacancies**

If any mediator shall become unwilling or unable to serve, the AAA will appoint another mediator, unless the parties agree otherwise.

#### **7. Representation**

Any party may be represented by a person of the party's choice. The names and addresses of such representatives shall be communicated in writing to all parties and to the AAA.

#### **8. Date, Time, and Place of Mediation**



The mediator shall fix the date and the time of each mediation session. The mediation shall be held appropriate regional office of the AAA, or at any other convenient location agreeable to the mediator parties, as the mediator shall determine.

#### **9. Identification of Matters in Dispute**

At least 10 days prior to the first scheduled mediation session, each party shall provide the mediator brief memorandum setting forth its position with regard to the issues that need to be resolved. At the discretion of the mediator, such memoranda may be mutually exchanged by the parties.

At the first session, the parties will be expected to produce all information reasonably required for the mediator to understand the issues presented. The mediator may require any party to supplement such information.

#### **10. Authority of Mediator**

The mediator does not have the authority to impose a settlement on the parties but will attempt to reach a satisfactory resolution of their dispute. The mediator is authorized to conduct joint and separate meetings with the parties and to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the dispute, if that the parties agree and assume the expenses of obtaining such advice. Arrangements for obtaining advice shall be made by the mediator or the parties, as the mediator shall determine.

The mediator is authorized to end the mediation whenever, in the judgment of the mediator, further mediation would not contribute to a resolution of the dispute between the parties.

#### **11. Privacy**

Mediation sessions are private. The parties and their representatives may attend mediation sessions; persons may attend only with the permission of the parties and with the consent of the mediator.

#### **12. Confidentiality**

Confidential information disclosed to a mediator by the parties or by witnesses in the course of the mediation shall not be divulged by the mediator. All records, reports, or other documents received by a mediator serving in that capacity shall be confidential. The mediator shall not be compelled to divulge such records to testify in regard to the mediation in any adversary proceeding or judicial forum.

The parties shall maintain the confidentiality of the mediation and shall not rely on, or introduce as evidence in any arbitral, judicial, or other proceeding:

- a. views expressed or suggestions made by another party with respect to a possible settlement dispute;
- b. admissions made by another party in the course of the mediation proceedings;
- c. proposals made or views expressed by the mediator; or
- d. the fact that another party had or had not indicated willingness to accept a proposal for settlement made by the mediator.

#### **13. No Stenographic Record**

There shall be no stenographic record of the mediation process.

#### **14. Termination of Mediation**

The mediation shall be terminated:

- a. by the execution of a settlement agreement by the parties;
- b. by a written declaration of the mediator to the effect that further efforts at mediation are no longer worthwhile; or



c. by a written declaration of a party or parties to the effect that the mediation proceedings are terminated.

### 15. Exclusion of Liability

Neither the AAA nor any mediator is a necessary party in judicial proceedings relating to the mediation.

Neither the AAA nor any mediator shall be liable to any party for any act or omission in connection with mediation conducted under these rules.

## 16. Interpretation and Application of Rules

The mediator shall interpret and apply these rules insofar as they relate to the mediator's duties and responsibilities. All other rules shall be interpreted and applied by the AAA.

## 17. Expenses

The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including required traveling and other expenses of the mediator and representatives of the AAA, and the expenses of any witness and the cost of any proofs or expert testimony produced at the direct request of the mediator, shall be borne equally by the parties unless they agree otherwise.

## MEDIATION FEE SCHEDULE

The nonrefundable case set-up fee is \$325 per party. In addition, the parties are responsible for compensating the mediator at his or her published rate, for conference and study time (hourly or per

All expenses are generally borne equally by the parties. The parties may adjust this arrangement by agreement.

Before the commencement of the mediation, the AAA shall estimate anticipated total expenses. Each shall pay its portion of that amount as per the agreed upon arrangement. When the mediation has terminated, the AAA shall render an accounting and return any unexpended balance to the parties.

Rules, forms, procedures and guides are subject to periodic change and updating. To ensure that you have the most current information, see our World Wide Web home page at [www.adr.org](http://www.adr.org)

AAA121-1/04

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
DOROTHEA PERRY,

Plaintiff,

03 Civ. 9221 (GBD)

-against.-

NEW YORK LAW SCHOOL and  
COLLEGIS, INC. ,

Defendants.  
-----X

**AFFIRMATION/CERTIFICATION OF SERVICE**

**LAWRENCE S. CUMBERBATCH**, being duly admitted to practice law in the State of New York and before this Court, affirms/certifies under penalties of perjury, that he served or caused to be served on May 7, 2004, the following papers: AFFIDAVIT & EXHIBITS and MEMORANDUM OF LAW IN OPPOSITION TO MOTION TO DISMISS

**BY:   x   MAIL- Depositing a true copy thereof in a *first class* post-paid wrapper, in an official depository of the United States Postal Service, addressed to each person named below, at the address indicated;**

**PERSONAL- Delivering a true copy thereof, personally, to each person named below, at the address indicated;**


**NEXT DAY DELIVERY COURIER/EXPRESS MAIL- Delivering a true copy thereof in a prepaid Next Day Delivery, Courier or U.S. Postal Service Express Mail, envelope # addressed to each person named below, at the address indicated;**

**FACSIMILE- Delivering a true copy thereof through telephone line transmission, to each person named below, at the facsimile telephone number indicated;**

NIXON PEABODY LLP  
990 Stewart Avenue  
Garden City, New York 11530-4838

JACKSON LEWIS LLP  
58 South Service Road, Suite 410  
Melville,, New York 11747

**Dated:** May 7, 2004

  
**LAWRENCE S. CUMBERBATCH, ESQ.**  
*Attorney for Plaintiff*



# **Exhibit A11**

## **R-54**



---Original Message---

From: Nadine Gyles [mailto:nadinegyles@optimum.net]

Sent: Thursday, August 20, 2015 9:55 AM

To: Francesca Prochazka

Subject: Exit Interview

Good morning

I wanted to inform you that Rosa didn't call me for the interview. I called @ 9:05 got her voicemail and called her back at 9:25 and she sounded like she forgot but said she was on a call. Also im disappointed with her attitude after the fact she didn't apologize for not calling untill i mentioned that its not nice to set an appointment and don't call and then try to through all this information at me that we were suppose to discuss for 30 mins, she was throwing out at me in 5 and i will let franchises know was when she said sorry. I know im not an employee anymore buy i dont have to be treated as such i gave the company almost 10 yrs very upsetting to be treated as such during a big life changing moment. Will write letter to Dolan also about this.

BSY  
Exh. No. BSY Received BSY Rejected BSY  
Case No.: BSY  
Case Name: BSY  
No. Pgs: BSY Date: 8/29/15 Rep: BSY



# **Exhibit A11**

## **R-55**



Wonder where Nadine Cycles disappeared to? She is with me at an NYC agency, under the protection of the largest union in New York City. To her credit she knew it was time to make a move, especially when she had no union protection and an employer that blatantly violates employee rights, and disregards the employee handbook. Now she has matched her salary, has paid time leave, benefits including union benefits, and more family time. She is now an unionized employee! I am so glad that she believed in me when I asked for her resume. I am happy she united with me to fight the union busters at Cablevision.

I reached out to another tech to give him the same opportunity. NO resume yet. Never say I did not try.

I told y'all I had experience with unions. I have been a union member for 12 years. I brought Cablevision to my hood, Brooklyn, to face the music and tell it all to the National Labor Relations Board. It cost me nothing for legal representation. I have always understood the right to organize that is granted to us under federal law. For those reasons I have asked you to trust me, and trust in CWA. I want to help you, but it starts with you helping yourself. It does not hurt you to be protected and have an organizing party (CWA) fight for your rights. fight against unfair metrics, disciplines, and illegal terminations. (Call 212.344.2515, ask for Zelig Stern or Tim Dubnau.)

Oh by the way, I've learned that more than half the call center is on a write up. Amazing! Y'all gonna take that?

Exh. No: RS5 Received ☒ Rejected ☐  
 Case No.: \_\_\_\_\_  
 Case Name: CSC Holdings  
 No. Pgs: 1 Date: 10/29/15 Rep.: EW



**Exhibit A11**  
**R-56**



From: Dorothea Perry  
To: Severo Mancebo  
Date: 7/17/04 9:13:00 AM  
Subject: Quest Drug Screening/Paperwork

You might want to double check on my Quest drug screening. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

I will leave the paperwork with Julius Han.

Thank you again.

Exh. No. RS6 Received ☒ Rejected ☐  
Case No.: \_\_\_\_\_  
Case Name: CSC  
No. Pgs: 7 Date: 7/19/15 Rep.: ALM



# **Exhibit A11**

## **R-57**





## MEMORANDUM

**To:** severo mancebo  
C&C - LI

**From:** Jenn Lopez  
Intelligence Services Research Analyst

**Date:** Tuesday, July 20, 2004

**Subject:** Employee Screening- 26719 TIER3 2004

Based on your request of Tuesday, July 20, 2004, a background investigation for

C&C - LI

the purpose of employment within  
has

Dorothea Perry

been completed for

The results of the investigation are

attached. The information provided to you is intended to assist you in making your final decision regarding the hiring of this candidate.

Please contact me with any questions.

CC: Scott Rosinger

Case Closed: Satisfactory

Exh. No. 257 Received ☒ Rejected ☐  
Case No.: CSC  
Case Name: AS  
No. Pgs: 10/21/15 Date: AS



**Severo Mancebo - Dorothea Perry 26719 T3 04 - Satisfactory**

---

From: Jennifer Lopez  
To: Severo Mancebo  
Date: 7/20/04 2:48 PM  
Subject: Dorothea Perry 26719 T3 04 - Satisfactory  
CC: Scott Rosinger

---

Severo,

We have completed the modified pre-employment screening for Dorothea Perry. Please see the attachment for the PDF hard copy. This case has been marked as "Satisfactory"  
Current Spherion Temp Employee.

We have verified employment with Collegis/NY Law School. The candidate was an employee of NY Law School from 4/2/90-11/1/97 as a PC Technician. She was then Employed through Collegis Inc from 11/97-10/02.

Gap in employment 02-04.

No negative or derogatory information found via news/media.

Thank you,

Jenn Lopez, Research Analyst  
Cable & Communications  
Intelligence Services  
Cablevision Systems Corporation  
Ph: (516)803-1363  
Fax: (516)803-2655

file:///C:/TEMP/GWJ00003.HTM

7/20/04





## Intelligence Services

Non-Exempt Pre-Employment Screening

Phone 516-803-2609 Fax 516-803-2665

Closed Status: Satisfactory

Case Number	26719 TIER3 2004	Recruiter	severo mancebo
Requested By	Scott Rosinger	Date Received	7/20/2004
Operating Division	C&C - LI	Date Completed	7/20/2004
Phone #	(516) 803-9506	Research by	Jenn Lopez
Fax #	(516) 719-0613		

SS Number	Redacted	Date of Birth	01/27/1967
Last Name	Perry	First Name	Dorothea M R
Address	74 Tapscott Street	Brooklyn NY	11212
Phone Number		Operating Division	C&C - LI
Position/Title	Tech Support Rep I	<input type="checkbox"/> Company Vehicle?	<input type="checkbox"/> Degree Required?

Report Summary

Current Spherion Temp Employee.

We have verified employment with Collegis/NY Law School. The candidate was an employee of NY Law School from 4/2/90-11/1/97 as a PC Technician. She was then Employed through Collegis Inc from 11/97-10/02.

Gap in employment 02-04.

No negative or derogatory information found via news/media.

	Status	Date
Past Employment Verification	OK	7/20/2004
Address / SS# Verification	OK	7/20/2004
Criminal History Review	OK	7/20/2004
Public Records Search	OK	7/20/2004
News Media Articles	OK	7/20/2004

PRIVILEGED AND CONFIDENTIAL - INTERNAL USE ONLY

CAUTION ADVISED

Recruiter Supervisor \_\_\_\_\_ Date \_\_\_\_\_  
Print Name Signature

STRONG CAUTION ADVISED

Supervisor/Director \_\_\_\_\_ Date \_\_\_\_\_  
Print Name Signature

JA R0003867



# **Exhibit A11**

## **R-58**





fake whatsapp message



Sign in

Web News Images Videos Shopping More Search tools



About 947,000 results (0.21 seconds)

**WhatsFake - Make fake conversations just like WhatsApp**

[www.whatsfakeapp.com/](http://www.whatsfakeapp.com/)

Aplicativo para criar conversas falsas (fake) de WhatsApp e compartilhar nas redes sociais.

**Yazzy (Fake Conversations) - Android Apps on Google Play**

<https://play.google.com/store/apps/details?id=com.cerminara.yazzy>

★★★★ Rating: 4 - 28,416 votes - Free

For the new WhatsApp design and Instagram download the "Yazzy Simulator" app.

**WhatsApp Trick to Generate Fake Conversation (Chat**

[www.droidlptricks.com/whatsapp-fake-chat-conversation-generator/](http://www.droidlptricks.com/whatsapp-fake-chat-conversation-generator/)

Oct 18, 2015 - Trending WhatsApp-trick to Create Fake WhatsApp chat by using an Android and iOS . . WhatsApp Fake Chat Conversations Creator Generator.

**WhatsFake ZapZap - Create Fake Chats Messages on the**

<https://itunes.apple.com/us/app/whatsfake-zapzap...fake/id880276767?..>

★★★★ Rating: 3.5 - 12 reviews - Free - iOS

May 30, 2015 - Read reviews, compare customer ratings, see screenshots, and learn more about WhatsFake ZapZap - Create Fake Chats Messages.

**Create Fake Whatsapp Conversation Like Real**

[www.whattochays.com/how-to/create-fake-whatsapp-conversation/](http://www.whattochays.com/how-to/create-fake-whatsapp-conversation/)

May 20, 2015 - There is a way to create a fake WhatsApp conversation using an Android . . you first time opens it has a blank screen with a message "No Chat".

**Fake iPhone Text Generator**

[www.fakephonetext.com/](http://www.fakephonetext.com/)

Create your own Fake iPhone Text. Most advanced iPhone Text generator online. Modify clock, connection, operator, everything in the iPhone messages.

**WhatsApp FAQ - I received a strange message. Is it true?**

[www.whatsapp.com/faq/en/general/28030005](http://www.whatsapp.com/faq/en/general/28030005) - WhatsApp

First and foremost, be advised that we do not use WhatsApp to send messages to you. We also do not send you emails about chats, Voice Messages, payment,

**How To Create Fake WhatsApp Chat From Your Android**

[swapmyapp.com](http://swapmyapp.com) - How To

Jun 13, 2014 - Create Fake WhatsApp Chat From Your Android and see the . . 400 million photos and over 20 billion messages are exchanged each day.

**How to make fake whatsapp message iphone ios 8.3 (No**



[www.youtube.com/watch?v=1hk4vT5OX2A](http://www.youtube.com/watch?v=1hk4vT5OX2A)

May 23, 2015 - Uploaded by iWorld JT

How to make fake whatsapp message iphone ios 8.3 (No Jailbreak) . . Install Whatsapp On iPad, iPod.

**Whatsapp fake conversation app download - YouTube**



[www.youtube.com/watch?v=f7wQzJJJUEM](http://www.youtube.com/watch?v=f7wQzJJJUEM)

Sep 17, 2014 - Uploaded by Manik Dhir

Here is a application for fake conversation for whatsapp. You can have fun by show fake messages. Root.

**Searches related to fake whatsapp message**

fake whatsapp message android whatsapp fake message creator

fake whatsapp conversation fake whatsapp number

fake whatsapp message iphone fake whatsapp account

Exh. No. 258 Received ✓ Rejected ✓

Case No.: \_\_\_\_\_

Case Name: CSC

No. Pgs: 2 Date: 7/30/15 Rep.: AB



[fake whatsapp message online](#)      [fake whatsapp conversation generator iPhone](#)



1 2 3 4 5 6 7 8 9 10 Next

© New York NY - From your Internet address - Use precise location - Learn more

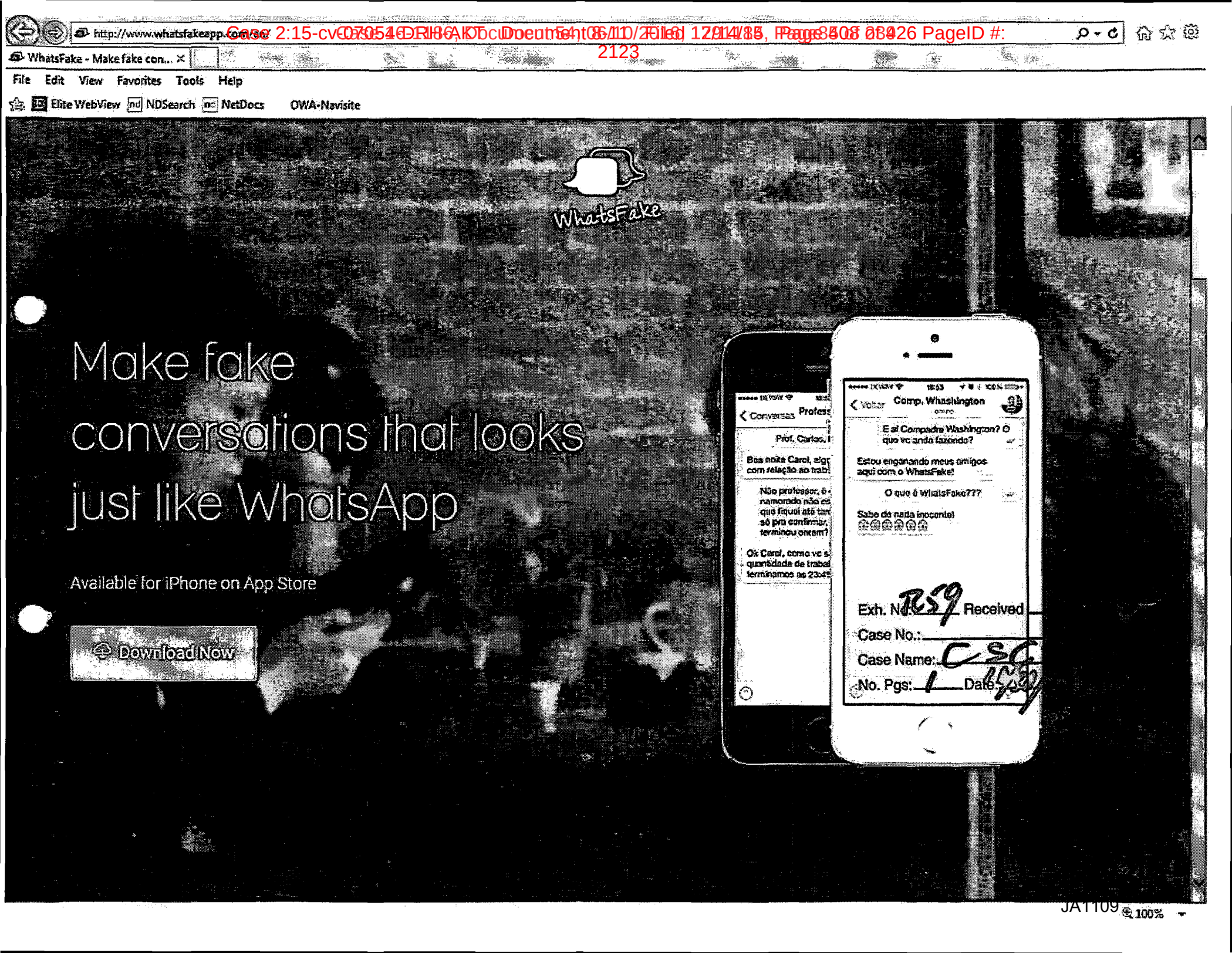
[Help](#) [Send feedback](#) [Privacy](#) [Terms](#)



# **Exhibit A11**

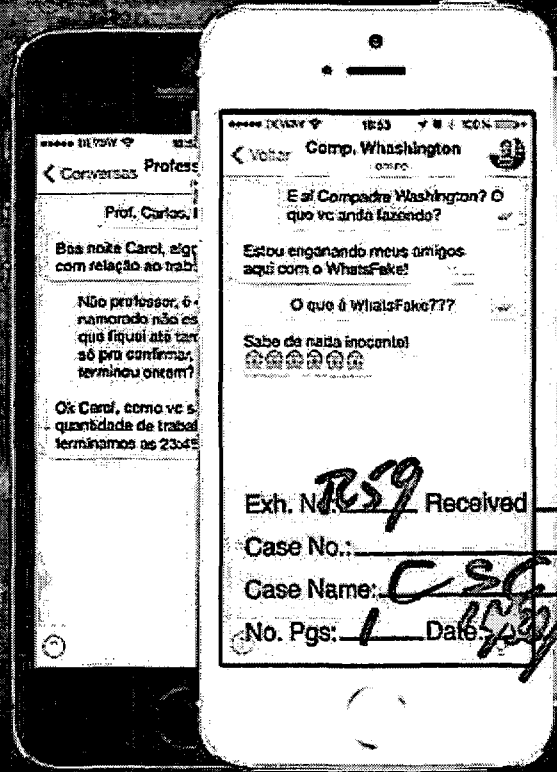
## **R-59**





Make fake  
conversations that looks  
just like WhatsApp

Available for iPhone on App Store



Exh. No. 259 Received  
Case No.:  
Case Name: CSC  
No. Pgs: 1 Date: 12/14/15



# **Exhibit A11**

## **R-60**



Google Play

Search

Categories Home Top Charts New Releases

My apps

Shop

Games

Family

Editors' Choice

Yazzy (Fake Conversations)

Vincenzo Cerminara Social

★★★★☆ 28,437

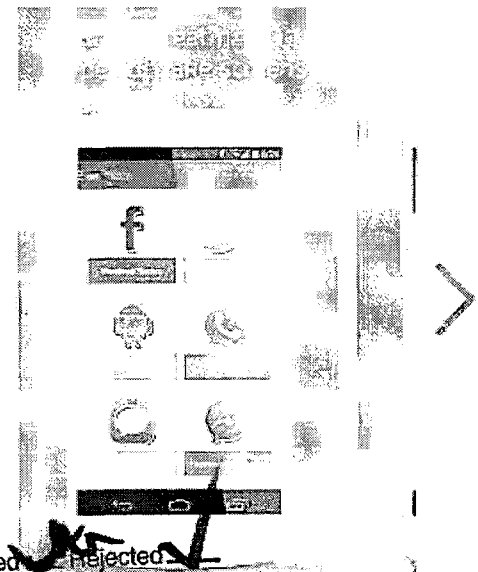
E Everyone

Offers in-app purchases

Add to Wishlist

Install

- My Play activity
- My wishlist
- Redeem
- Buy gift card
- Buy Google Play credit
- Parent Guide



Exh. No. 260 Received ✓ Rejected ✓

Case No.: \_\_\_\_\_

Case Name: CSC

No. Pgs: \_\_\_\_\_ Date: 12/29/15 By: AS



Official Facebook Page: [www.facebook.com/yazzyapp](http://www.facebook.com/yazzyapp)

- Android SMS
- iPhone SMS (iOS7 style) with emojis support
- WhatsApp with emojis support
- Facebook Messenger
- Facebook Status with comments and likes
- Tweets with hashtag and mentions support
- Google searches
- Hangout
- WhatsApp groups
- Google translate
- Ask.FM
- iPhone WhatsApp

The watermark can be removed from Settings.

- ☆ <http://www.tuttoandroid.net/android/app-nursery-yazzy-conversazioni-false-133756/>
- ☆ <http://www.hardware-programmi.com/yazzy-come-creare-sms-e-conversazioni-su-facebook-false/>
- ☆ <http://www.scarichiamo.it/yazzy-crea-da-la-tua-finta-conversazione-virtuale-2129/>
- ☆ <http://www.gekissimo.net/2014/03/creare-false-conversazioni-chat.html>



☆ <http://www.chiccheinformatiche.com/come-creare-false-conversazioni-in-facebook-whatsapp-yazzy/>

☆ <http://whitehatdevil.com/create-fake-conversation-android/>


☆ <http://www.yourlifeupdated.net/android/creare-false-conversazioni-chat-facebook-whatsapp-sms-e-altro-ancora-con-yazzy/>

Note: The developer has no responsibility for the incorrect use (against the law) of the application.

Required permissions:

- > Network access: show advertising and anonymous reporting of errors
- > Storage access: selection of avatars and saving images
- > Access to contacts/profile: autocompletion of name/number in Android SMS and Hangout
- > Billing: remove advertising through In-App Purchase



 [Write a Review](#)

## 4.2



28,437 total

★ 5 17,678

★ 4 4,327

★ 3 2,542

★ 2 1,163

★ 1 2,327



Its really good but One thing I will say is to make this app better you should be able to



Blue iPhone SMS and  
WhatsApp Group iPhone I  
really hope that you could




Love it I love this app!! It's fun to use for imagines that I make for Twitter and stuff. But jus



Boo ☹ so easy to tell cause  
the hangouts does not look like  
that anymore, google search!



<b>Updated</b> October 6, 2015	<b>Size</b> 8.2M	<b>Installs</b> 1,000,000 - 5,000,000
<b>Current Version</b> 2.06.1	<b>Requires Android</b> 4.0 and up	<b>Content Rating</b> Everyone Learn more
<b>In-app Products</b> \$2.30 per item	<b>Permissions</b> View details	<b>Report</b> Flag as inappropriate
<b>Offered By</b> Vincenzo Cerminara	<b>Developer</b> Visit website Email vincenzo.cerminara94@gmail.com via Che Guevara, 6 88819 Verzino (KR) Italy	

 2.7k



# **Exhibit A11**

## **R-61**



# ANDROID TIPS TRICKS

[HOME](#)[HOW-TO](#)[ANDROID APPS](#)[GUIDES](#)[ANDROID GAMES](#)[ANIME](#)

## WHATSAPP TRICK TO GENERATE FAKE CONVERSATION (CHAT) SCREENSHOT

OCTOBER 18, 2015 BY ASHWIN REDDY

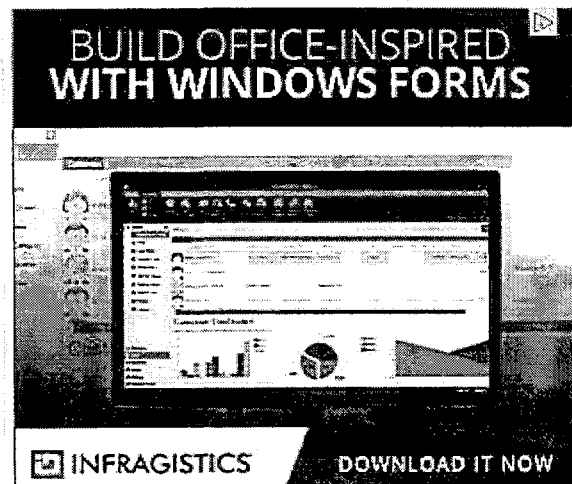


### START INSTALL

3 Steps to PC Speed Test

- ↓ 1. Click Start Install
- 2. Install Extension
- 3. Test and Fix PC Speeds

My Speed Test XP™ tool

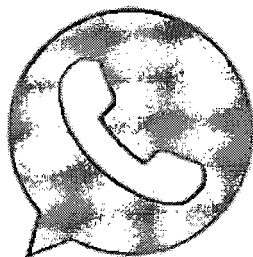


Exh. No. 261 Received ☐ Rejected ☒  
Case No.: CS C1  
Case Name: CS C1  
No. Pgs: 10/30/15 Date: 10/30/15 Rep.: BSW

It's a valentine's day today and still I got a time to write an article on my blog! (You know what i mean :P) anyway, let's come to the point!



Did you ever received a WhatsApp conversation or chat screenshot from your friend? I know your answer, Its definitely BIG YES! but be careful it may be created with the fake Whatsapp chat screenshot generator (creator), may be you've got fooled!



# FAKE CHATS!!!

DroidTipsTricks.com

So, In this article we are going to discuss about this WhatsApp Fake Chat Creator of the Fake WhatsApp Messages, Chats or you say Conversations. There are some apps available on the Web which will allow you to generate a screenshot of your desire Whatsapp chat and will allow you to generate or create an Image of that conversation with just a few taps on you phone. So, let's find out the apps and how to generate a fake screenshot to fool someone!



## HOW TO GENERATE FAKE WHATSAPP CONVERSATION (CHAT) SCREENSHOT?

**Step 1:** Most probably there are three popular apps to generate fake Whatsapp conversations as listed below:

1. Yezzy (For Android Download Now)
2. WhatsSaid (Also for Android Download Now)
3. WhatsFake (For iOS Devices Download Now)

**Step 2:** Download any app from above list.

I am using Yezzy because it is available on Google play as well as It is generating the screenshot as per the latest WhatsApp user interface, however, it is leaving its watermark in generated screenshot but it is not a big problem for me, I can crop it!

**Step 3:** Once you successfully download and Install app then open it, There you will find options for generating fake things.

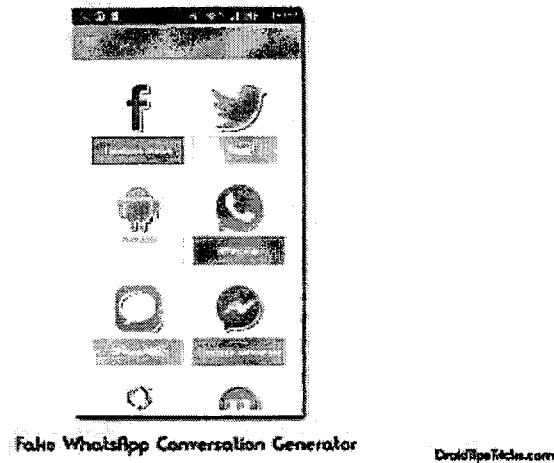
AdChoices 

[▶ Download Whatsapp](#)

[▶ Install Whatsapp](#)

[▶ Whatsapp Free](#)





In Yezzy, There are many option including WhatsApp, Facebook, Twitter, etc.

AdChoices 

► [Whatsapp for PC](#)

► [Whatsapp Messenger](#)

► [Whatsapp Mobile](#)

**Step 4:** We are here to generate the fake whatsapp screenshot so we will choose whatsapp and go ahead.

**Step 5:** Once you choose WhasApp there in first screen you will get options for choosing image of the person, their name, background and also you will get the latest feature of blue check mark. So, screenshot will be more realistic.

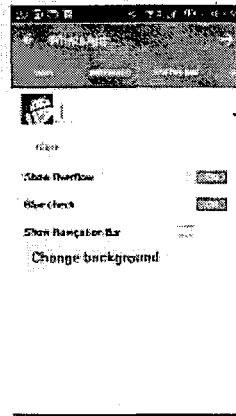
AdChoices 

► [App Download](#)

► [Whatsapp Chat](#)

► [Whatsapp App](#)

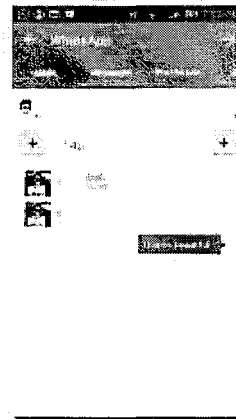




Fake WhatsApp Conversation Generator

DroidTipTricks.com

Step 6: Once you're done with the above step, move forward to the "MESSAGES" tab there write your desired fake conversation as I have done in below picture.



Write Your Fake Conversation Here

DroidTipTricks.com

You should also read:

1. 151 Best Ever Whatsapp Status



2. How to Use 2 Whatsapp Accounts In One Phone

3. Whatsapp Picture Trick For Thumbnail Change

**Step 7:** And then just follow the next tabs as per your requirement and at last press the refresh button which is on the top right corner to generate the Fake Whatsapp conversation screenshot and if you want to save it then tap on save button and image will be saved to phone.



So, I hope this WhatsApp trick will be helpful to you to fool someone by generating (creating) fake WhatsApp chat or conversation screenshot image. If you have any query or just what to share your views then feel free to drop comments below. If you are in love with this blog then do subscribe to our newsletter for free updates of our upcoming articles.



# **Exhibit A11**

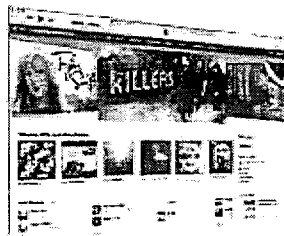
## **R-62**





## iTunes Preview

Overview Music Video Charts



iTunes is the world's easiest way to organize and add to your digital media collection.

We are unable to find iTunes on your computer. To download the free app WhatsFake ZapZap - Create Fake Chats Messages by Dewey, get iTunes now.

Already have iTunes? Click I Have iTunes to open it now.



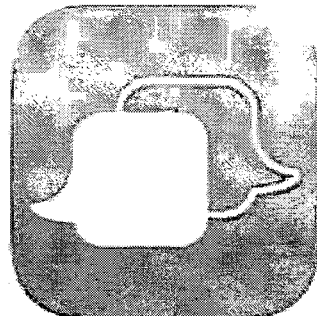
**iTunes 11**  
For Mac + PC



## WhatsFake ZapZap - Create Fake Chats Messages

By Dewey

Open iTunes to buy and download apps.



View in iTunes

Free

Category: Social Networking

### Description

Make fake conversations with your friends, even with your boyfriend or girlfriend! You can easily make fake chats of instant messaging apps and share with your friends on social networks.

Dewey Web Site » WhatsFake ZapZap - Create Fake Chats Messages Support »

### What's New in Version 1.6

In this release, we added some awesome new (and highly requested) features! Plus, we took some time to fix some bugs.

Exh. No. 162 View More by This Developer ☒ Received ☐ Rejected ☐  
Case No.: \_\_\_\_\_  
Case Name: CSC  
No. Pgs: \_\_\_\_\_ Date: 10/2/15 Rep.: AC

[More](#)



Updated: May 30, 2015  
Version: 1.6  
Size: 11.8 MB  
Languages: English, French,  
German, Italian, Japanese,  
Korean, Polish, Portuguese,  
Simplified Chinese, Spanish,  
Traditional Chinese  
Seller: Dewey Sistemas e  
solucoes Ltda.  
© Dewey Sistemas e  
Soluções LTDA 2014  
You must be at least 17 years  
old to download this app.  
Unrestricted Web Access

**Compatibility:** Requires iOS 7.0  
or later. Compatible with  
iPhone, iPad, and iPod touch.

### Customer Ratings

Current Version:  
★★★★ 12 Ratings  
All Versions:  
★★★★ 41 Ratings

### Top In-App Purchases

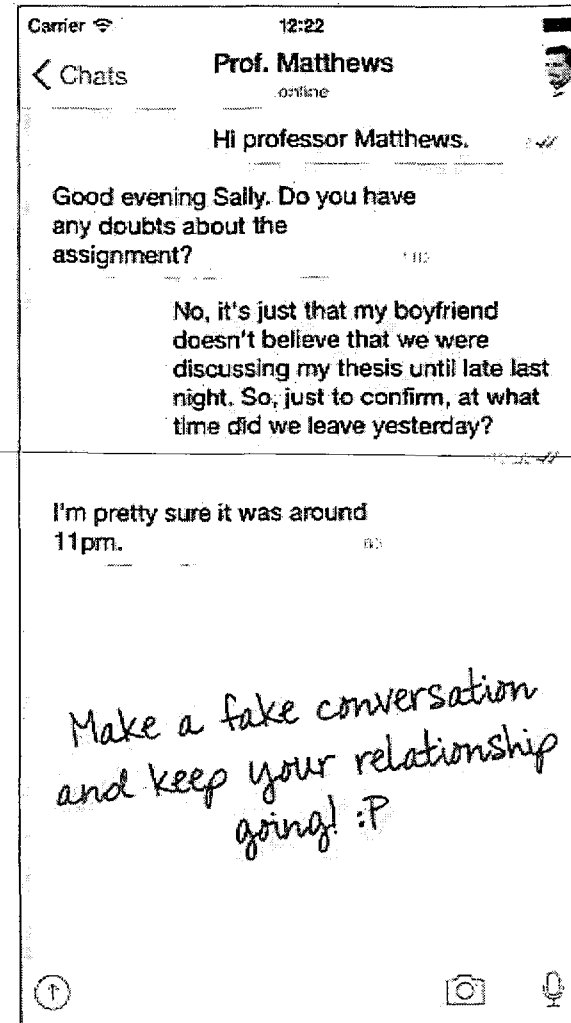
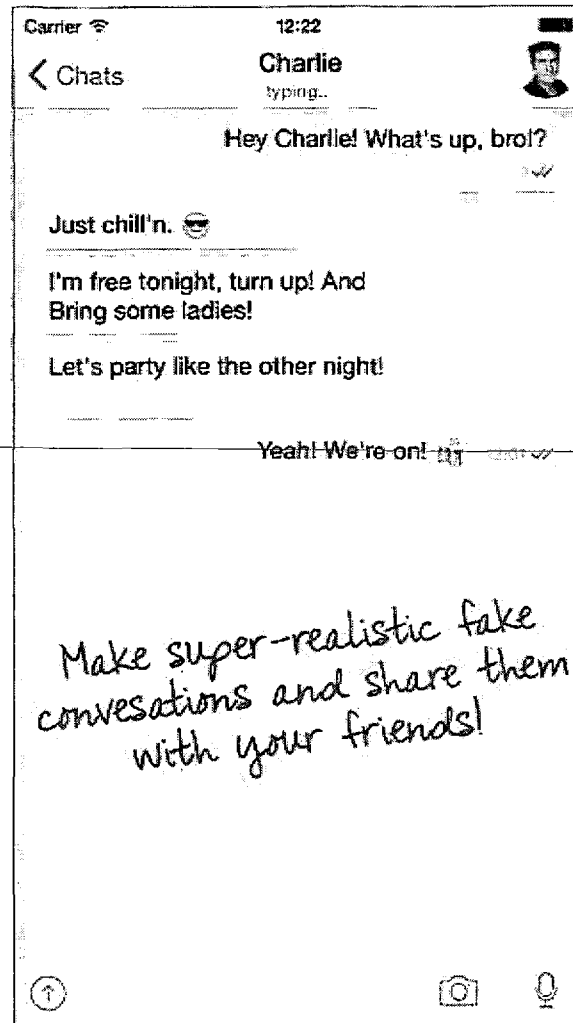
1. Remove Ads \$1.99

### More iPhone Apps by Dewey



MicroCam - Take photos with.  
View In iTunes

## iPhone Screenshot



### Customer Reviews

Broke my App Store. ★  
by A Man with Taste in Music





WhatsFake Pro – Make Fake C.  
View In iTunes »

I accidentally tapped the button to buy, when I didn't mean to. I closed out of the app and it was still trying to buy. I deleted the app and now I can't download any apps – even free ones – unless I've got money on my card. When I did .More

Please make this feature possible ★★★★★  
by tristannnn\_

I love this app it's perfect I even bought the remove ad there's just one little thing I wish I would change the order of my chats so that their alphabetically or in the order I desire so it doesn't look so specific thank you !!  
\*\*The new update deleted all my chats !!?



iHelp  
View In iTunes »

Seriously deserved a 5! ★★★★★  
by HK7VEVOs

Don't you think you should also add 2 things , 1) groups 2) audio messages ( don't forget the time of the audio. .)  
thank u for an awesome app I love you



iSoletrando Brasil  
View In iTunes »

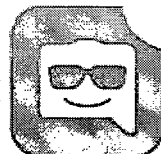
### Customers Also Bought



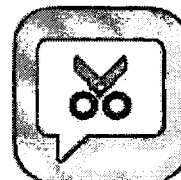
Iguatemi Fortaleza  
View In iTunes »



Kiwi – Q&A  
Social Networking  
View In iTunes »



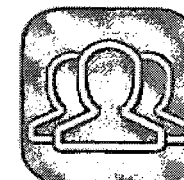
Kamio: Easy Edits.  
Social Networking  
View In iTunes »



FabriChat – Fabric.  
Social Networking  
View In iTunes »



Mandic magic  
Social Networking  
View In iTunes »



Supergram Follow.  
Social Networking  
View In iTunes »

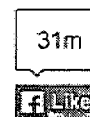
### App Store on Facebook and Twitter



Discover and share  
new apps.  
Follow us on  
@AppStore.



Discover and share  
new music, movies,  
TV, books, and  
more.



### iTunes on Twitter



Follow us @iTunes and discover  
new iTunes Radio Stations  
and the music we love.



Tunes

Shop and Learn

Mac  
iPad  
iPhone  
Watch  
Apple Music  
iTunes  
iPod  
Apple TV  
Accessories  
Gift Cards

Apple Store

Find a Store  
Genius Bar  
Workshops and Learning  
Youth Programs  
Apple Store App  
Refurbished  
Financing  
Reuse and Recycling  
Order Status  
Shopping Help

For Education

Apple and Education  
Shop for College

For Business

iPhone in Business  
iPad in Business  
Mac in Business  
Shop for Your Business

Account

Manage Your Apple ID  
Apple Store Account  
iCloud.com

Apple Values

Environment  
Supplier Responsibility  
Accessibility  
Inclusion and Diversity  
Education

About Apple

Apple Info  
Job Opportunities  
Press Info  
Investors  
Events  
Hot News  
Legal  
Contact Apple

Go to the store to shop. Visit an Apple Store, call 1-800-MY-APPLE, or find a reseller.

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 United States



From: Yvette Panno  
 To: John Tucci; Milton Lopera  
 Sent: 5/26/2015 1:07:51 PM  
 Subject: Dorothea Perry -- Confidential Update

FYI

From: Dorothea Perry  
 Sent: Monday, May 25, 2015 12:50 AM  
 To: Yvette Panno  
 Subject: Re: Meeting

Exh. No: 1 Received ☒ Rejected ☐

Case No.:                     

Case Name: CSC

No. Pgs: 1 Rep:                     

Ms. Panno: I hope your daughter enjoyed the prom. Of course I would love to see the pictures. I seem to recall that I did not finish telling you the story of my son's acceptance to Manhattanville College, based on his SAT scores. The school offered him 36K in financial aid which included scholarships and grants to cover the 50K in tuition, room, and board. My outlay would only be \$14K for the year if he maintained a 3.0 GPA. I declined the package because I knew that there was a strong possibility, based on his performance in high school, that he would have some difficulties meeting the goals the school required of him. Although my son assured me he would be able to make the 3.0, I did not want to add more pressure to his situation. I believe I made the right choice. My son is doing very well in a college that does not require him to maintain the 3.0 gpa to maintain his financial aid package. Despite that, he is still making very good academic progress. He is doing everything that it takes to be successful and will graduate on time.

Yvette, not everyone responds well to having their future tied to benchmarks. Cablevision is adding undo pressure to the techs by setting high standards in performance and requiring techs to meet every metric or else be placed on action plans. In most cases terminating technicians because they cannot correct their "issues" within two months. NPS is one of those metrics that is completely unfair to the tech and I stand by that no matter how many focus groups you ask me to attend. Why should my performance/success be measured by the customer's experience with the prices and services that Cablevision imposes on them? How can I change the price that a customer does not like? And with Cablevision consistently raising prices and adding fees, there will of course be more reasons for customers to have a less than great experience with Cablevision. Do I have the ability to set new pricing? To waive fees? NO! I believe NPS is being used as a tool to terminate employees.

With regard to Mr. Dolan's speech three years ago, where he said in no uncertain terms that we were to take our time and talk to the customers to resolve their issues, and that TAHT would no longer be a measure of tech performance, what happened? Why has he reversed himself? The reversal seems more akin to a politician breaking his promise. Did he say that to dissuade people from considering unionization? Was the comment he made about wanting to create an environment where employees can retire from the company also something he will eventually reverse? If Cablevision needs to downsize TSG for whatever reason why not offer buy out plans?

As you know the actions plans are in effect. I believe we are now evaluated on NPS, knowledge Check, first call resolution, as well as adherence, and internal transfer rate. How soon will it be before more and more techs are terminated because they can't meet these performance goals? The same techs that have been working here for years have suddenly become detractors. The same techs that allowed Cablevision to win the J.D. Powers award multiple years. What's different? When I consider that Claudio Jimenez was on an action plan for 2 years before he was terminated, and never removed from the special project he was on, while others were. . Why was Claudio so special to be given so much time to correct his stats and performance? I can't help but see a strong case of discrimination.

In closing, I really do appreciate that you waited to speak to me regarding the issues I

JA1128

R0000069



**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

JAMES G. PAULSEN, Regional Director of  
Region 29 of the National Labor Relations  
Board, for and on behalf of the NATIONAL  
LABOR RELATIONS BOARD,

Petitioner,

-against-

CSC HOLDINGS, LLC and CABLEVISION  
SYSTEMS CORP.,

Respondents.

Case No. 15-cv-7054 (DRH) (AKT)

**DECLARATION OF KENNETH A. MARGOLIS**

**KENNETH A. MARGOLIS**, declares under penalty of perjury, pursuant to 28 U.S.C.  
§ 1746, that the following is true and correct:

1. I am a member of the firm Kauff McGuire & Margolis LLP, counsel for Respondents CSC Holdings, LLC and Cablevision Systems Corp. in the referenced action.
2. I am fully familiar with the facts set forth herein.
3. On December 21, 2015, Respondents served a subpoena *duces tecum* upon the Custodian of Records – Communications Workers of America, AFL-CIO (“CWA”) in connection with this proceeding. Exhibits 1-6 and 7-16 attached hereto are true and correct copies of documents produced by the CWA on January 5, 2016 pursuant to the subpoena *duces tecum*. Exhibit 8 is a true and correct copy of a document produced by the CWA to Respondents in connection with the hearing held before Administrative Law Judge Mindy E. Landow in National Labor Relations Board Case No. 29-CA-154544. In both instances, the CWA stated that redactions were made in order to conceal the



identities of Cablevision employees and, in the case of the subpoena *duces tecum* served in this proceeding, activities at locations other than the Jericho, New York facility at issue in these proceedings.

4. Attached hereto as Exhibit 1 is an e-mail, dated October 1, 2015, with attachments, from Dorothea Perry to Tim Dubnau and Zelig Stern.

5. Attached hereto as Exhibit 2 is an e-mail dated September 22, 2015 from Perry to Dubnau.

6. Attached hereto as Exhibit 3 is an e-mail dated June 30, 2015 from Stern to Dubnau.

7. Attached hereto as Exhibit 4 is an e-mail exchange dated June 11-12, 2015 between Perry, Stern and a redacted recipient.

8. Attached hereto as Exhibit 5 is an e-mail dated June 12, 2015 from Perry.

9. Attached hereto as Exhibit 6 is an e-mail dated June 13, 2015 from Perry to Stern.

10. Attached hereto as Exhibit 7 is an e-mail exchange dated June 24, 2015 between Perry, Stern and a redacted recipient.

11. Attached hereto as Exhibit 8 is an e-mail exchange dated June 25, 2015 between Perry and Stern.

12. Attached hereto as Exhibit 9 is an e-mail dated July 12, 2015 from Perry.

13. Attached hereto as Exhibit 10 are e-mails dated August 19 and 21, 2015 from Perry.

14. Attached hereto as Exhibit 11 is an e-mail dated September 22, 2015 from Stern to Perry and redacted recipients.



15. Attached hereto as Exhibit 12 is an e-mail dated October 1, 2015 from Perry to Dubnau and Stern.

16. Attached hereto as Exhibit 13 is an e-mail dated October 1, 2015 from Perry.

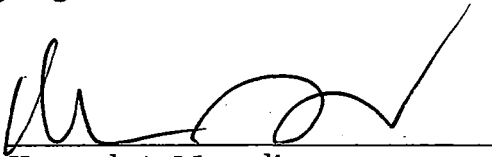
17. Attached hereto as Exhibit 14 is an e-mail dated October 2, 2015 from Perry.

18. Attached hereto as Exhibit 15 is an e-mail dated October 2, 2015 from Perry.

19. Attached hereto as Exhibit 16 is an e-mail dated December 9, 2015 from Perry.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: January 11, 2016  
New York, New York



Kenneth A. Margolis



# EXHIBIT 1

JA1132



**Subject:** Fw: Why does Anthony have a duty to report you? Look what Gil did to Val (see attached)  
**From:** <dorothea.perry@verizon.net>  
**Date:** 10/1/2015 4:21 PM  
**To:** Tim Dubnau <tdubnau@cwa-union.org>, Zelig Stern <zstern@cwa-union.org>

On Thursday, October 1, 2015 3:27 PM, "dorothea.perry@verizon.net" <dorothea.perry@verizon.net> wrote:

Panno took the stand today. She admitted that an investigation was opened once I sent an email to James Dolan BUT it wasn't into the matters that I raised, it was into my performance, ADA requests/approval, time/leave, metrics. I had no issues with any of these things. Then she said THEY decided that since I was not in support of NPS that I should be terminated. There you go kiddies, that is how things work. You should fear retaliation and reprimand for speaking out. There is NO open door policy despite page 36 of the employee handbook.

For the record, I am disclosing the name of the **UNNAMED supervisor** who reversed his position, and that means he reversed his position on those that thought they could trust him. DO NOT trust **Anthony Maharaj**. He introduced me to several technicians that were interested in getting union information, then he later told me he was "management" Anthony showed up at the NLRB to testify for Cablevision. You still trust him? This is the man that told me how much he admired me for my strength. Look at him now. This is the man that knows the names of some of the people on the BCC. I wonder if he's ratting y'all out now? My communication with fellow employees about union activity is protected which means I am under no duty to produce communications or names. He has a duty to report those of you who are interested in unions, requested union material, or attended union meetings.

The other company witness is Renero.

Welcome to the real world. Be careful who you call your friends.

Dorothea Perry  
Veritas et Aequitas  
**Alt. Email** [msdorothea.perry@gmail.com](mailto:msdorothea.perry@gmail.com)

— Attachments: —

How Cablevision targets people 2.pdf

100 KB



**Subject:** When Cablevision targets you, especially for union activity, you won't know until it's over

**From:** <dorothea.perry@verizon.net>

**Date:** 9/30/2015 7:03 PM

**To:** Dorothea Perry <dorothea.perry@verizon.net>

I sent an email to James Dolan, using Cablevision's open door policy. 19 minutes later, they were working on how to handle me. The same day they were plotting my termination. They were looking for reasons to dismiss me, including, but not limited to my ADA requests. They even fabricated documentation to include in my file. And you still do not believe you need a union?

Tell me what you think of HR now. Do not trust James Dolan! Do not trust Yvette Panno! Do not trust Francesca! Do not trust management!  
GET A UNION quick or next time it could be YOU!

See attached. Feel free to share. You have a legal right to organize!

Contact:

Organizing Coordinator  
District One  
W 212-344-2515  
C 609-658-0033  
tdubnau@cwa-union.org

---

Zelig Stern  
Organizer Communications Workers of America  
347 337-1741  
zsstern@cwa-union.org

---

**Matt Jackson**  
Field Attorney  
National Labor Relations Board  
Region 29  
2 MetroTech Center, 5<sup>th</sup> Floor  
Brooklyn, NY 11201  
(718) 330-2148

Dorothea Perry  
Veritas et Aequitas  
**Alt. Email msdorothea.perry@gmail.com**

---

—How\_Cablevision\_Targets\_Employees.png



From: Francesca Prochazka  
 To: Yvette Panno  
 Sent: 5/11/2015 6:10:16 PM  
 Subject: RE: D Perry work place accommodation request 4/30/15

Will do.

From: Yvette Panno  
 Sent: Monday, May 11, 2015 6:10 PM  
 To: Francesca Prochazka  
 Subject: RE: D Perry work place accommodation request 4/30/15

Please add this email to the doc.

From: Francesca Prochazka  
 Sent: Monday, May 11, 2015 4:20 PM  
 To: Yvette Panno  
 Subject: FW: D Perry work place accommodation request 4/30/15

Just an fyi- just spoke with Scott. He provided me with the leave information - I'm adding it in the escalation now.

From: Scott Rosinger  
 Sent: Monday, May 11, 2015 4:15 PM  
 To: Francesca Prochazka  
 Subject: D Perry work place accommodation request 4/30/15

Hi Francesca,

Please see note:

Employee, Dorothea Perry sent me an email from her personal email address with a letter from a

Attachments

How Cablevision targets people 2.pdf	100 KB
How_Cablevision_Targets_Employees.png	157 KB



# EXHIBIT 2

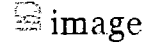
JA1136



**Subject:** Re: Cablevision -- Altice Merger-- The job you save could be your own.  
**From:** <dorothea.perry@verizon.net>  
**Date:** 9/22/2015 4:31 PM  
**To:** Tim Dubnau <tdubnau@cwa-union.org>

Yes, it seems that the unionized rank-in-file will be tough to deal with. Oh well for those that said NO to unions. They should have joined me instead of not supporting my attempts to help them.

Please see: Cablevision boss: We're slashing big salaries

image

Cablevision boss: We're slashing big salaries

Patrick Drahi, owner of Altice has, who just sealed a deal to buy Cablevision, signaled that budget changes were coming at the company

View on [www.cnn.com](http://www.cnn.com)      Preview by Yahoo

Dorothea Perry  
Veritas et Aequitas  
Alt. Email [msdorothea.perry@gmail.com](mailto:msdorothea.perry@gmail.com)

On Tuesday, September 22, 2015 4:12 PM, Tim Dubnau <tdubnau@cwa-union.org> wrote:

Dear Cablevision worker and contractors in New York, New Jersey and Connecticut

Many people have reached out to the union regarding the announced sale of Cablevision to Altice. People are rightly worried that jobs are on the line with this new company.

## Altice: A track record of contracting out, layoffs

Altice has a ruthless reputation for downsizing, contracting out, laying off and cutting employees. In fact, the head of Altice, Patrick Drahi said "I don't like to pay salaries. I pay as little as I can." Reuters recently quoted Morningstar investment research firm, which stated: "Altice has an impressive record of cost reduction, and we expect it will be much more aggressive than the Dolan family in cutting expenses, including reducing employee headcount."



# Union Vs. Non-Union

Of the 30,000 Cablevision workers in the 'foot print,' only the Cablevision workers in Brooklyn have a real say in their future. In the event of any sale, the Brooklyn workers will have the ability to negotiate over our jobs. The Brooklyn workers can also work together with their union to use political power to ensure they have a "seat at the table." Only the unionized workers in Brooklyn will have a real voice in their future.

## Get Ready for Cablevision Spin

Cablevision is probably desperate to sell the company to Altice mostly as a non union shop. So they will now do the full court press saying things like "Your future is bright," "Your jobs are not in jeopardy," etc. These empty promises from Cablevision have zero legal weight.

Expect an anti union video coming soon. Expect a visit by Cablevision top brass too. We have just learned that the company is asking the few anti-union workers in Brooklyn (there are very few) to put a video together to convince everyone that you don't need a union. It's more spin, more deception. The overwhelming majority of Brooklyn workers support their union and are glad that they have a voice in their future.

## Union = Legal Protections.

Once you are represented by a union, the company **cant change any terms or conditions of employment without bargaining with the union (this includes layoffs)**. Think about that. That gives folks a tremendous amount of leverage.

**Check out this attached flyer for more details.** I be sure to email us with any questions, and check out [www.facebook.com/cablevision99](http://www.facebook.com/cablevision99) for more info.

In Solidarity

Tim

PS: Please be sure to forward this email to your coworkers and post the attached flyer on your facebook page too.

--

Tim Dubnau  
Organizing Coordinator  
District One

W 212-344-2515  
C 609-658-0033



'Like' us on [www.facebook.com/vzwrising](https://www.facebook.com/vzwrising)



# EXHIBIT 3

JA1140



**Subject:** Organizing Report  
**From:** Zelig Stern <zstern@cwa-union.org>  
**Date:** 6/30/2015 11:58 AM  
**To:** Tim Dubnau <tdubnau@cwa-union.org>

Hey Tim,

Here is an organizing report. I haven't been up on these exactly (maybe because I haven't had much organizing to report on sadly). At any rate enjoy this bleak report.

CABLE VISION (Jerico [REDACTED] [REDACTED]) -We had a small up tick in people reaching out to us from these two call centers. We had two meetings each attended by three people. We were able to get some interest by the people who attended the meetings in starting a petition around shop floor issues. However when they spoke with their coworkers everyone was too scared to move forward. We have gathered 16 contacts.

One of our leaders Dorothea Perry was fired for union activity including sending Dolan a personal e mail where she speaks up for the union. We are filing a ULP.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



# EXHIBIT 4

JA1142



**Subject:** Re: Interested party  
**From:** Dorothea Perry <dorothea.perry@verizon.net>  
**Date:** 6/12/2015 1:55 PM  
**To:** Zelig Stern <zstern@cwa-union.org>  
**CC:** [REDACTED]

I am available in the evenings, You guys just let me know

Dorothea Perry  
Veritas et Aequitas  
**Alt. Email** [msdorothea.perry@gmail.com](mailto:msdorothea.perry@gmail.com)

On Friday, June 12, 2015 12:09 PM, Zelig Stern <zstern@cwa-union.org> wrote:

Hey Dorothea [REDACTED]  
I would love to find a time to sit down with you and talk about how to make CV a better place to work. I could come out to the call center any day next week to meet you or you and some of your coworkers. Let me know any day and time that works for you. It is my experience that people will not come to a meeting that they see posted on the internet. They will only come to a meeting if they are invited in person by their coworkers. Hope to see you soon.  
Solidarity  
Zelig Stern  
[REDACTED]

On Thu, Jun 11, 2015 at 5:08 PM, Dorothea Perry <dorothea.perry@verizon.net> wrote:  
Please keep [REDACTED] in the loop. He suggests that you post meetings on the CWA site. We need to establish a good location and time. Dunkin Donuts McDonalds, or Burkert King.  
  
Dorothea Perry  
Veritas et Aequitas  
**Alt. Email** [msdorothea.perry@gmail.com](mailto:msdorothea.perry@gmail.com)



# EXHIBIT 5

JA1144



**Subject:** Welcome to Power  
**From:** Dorothea Perry <dorothea.perry@verizon.net>  
**Date:** 6/12/2015 1:54 PM  
**To:** Dorothea Perry <dorothea.perry@verizon.net>

<https://soundcloud.com/charles-coleman-1/welcome-to-power?in=charles-coleman-1/sets/i-am-very-powerful>

They sound like chips and ass (do not trust them) Yo They sound like Do-Lan

How long must TSG feel this way? Imma bout to do this thing (unionize you)

Power is when you manifest dreams (unionization) I could F CV and make'm scream. .thats normal.

Power is when you have to save ur world (TSG) cause it belongs to you that's what you supposed to do. .(sometimes you have to sacrifice yourself bring about change)

Power is when you give ppl somewhere to stay (jobs) cause cause you saw the road when they aint think it was paved

Power is when you have to make a difference and you choose to kill a whale when everybody is fishing.

Power is whatever you make it. **There is Power in People unmatched and unequal.**

**POWER POWER POWER POWER POWER**

TSG all my love to thee. all my love thee. all my love to thee, how can you be?

Let me spit something to you real quick. I got more jobs in lower manhattan..lol. I'm too busy spitting crack I don't got time to be stressin'

They trippin if they think they gonna give me a run for my money They always following beef don't make sense to think they humble.

They launched the battle rap so if anyone wanna test my skills HR could write a verse (against me) and this is how every punchline would feel

Technically I'm not the best you boys just lost your technique you try to blend into the crowd they make you lose your mystique

I've been fighting termination fears that internal conflict always having union thoughts that's just my conscience.

I'm completely compelled to commence kickin' ass but intelligence is at my disposal so Imma get rid of the trash



My deck full of union cards. you could be my apprentice writing since BK got high. I'm just developing my (contact) list

I wonder if I am who you thought I would be. I'm just trynna see the things I always wanted to see (unionization)

I started falling off before I got to the peak (full unionization) thats cause I'm too militant I couldn't camouflage my fatigue.

I don't just wanna just change my clothes I want to change your lives. So you can view the world different (TSG) with the same eyes.

I am POWER, This is POWER (unions), you are POWER .WE ARE POWER!!!

We see yall suffering!

Dorothea Perry  
Veritas et Aequitas

**Alt. Email [msdorothea.perry@gmail.com](mailto:msdorothea.perry@gmail.com)**



# EXHIBIT 6

JA1147



**Subject:** [REDACTED]  
**From:** Dorothea Perry <dorothea.perry@verizon.net>  
**Date:** 6/13/2015 2:31 PM  
**To:** Zelig Stern <zstern@cwa-union.org>

He has about [REDACTED] ppl on board he is trying to get more.

I am frustrated because CV wants it to seem as if I committed a grave offense. They've never searched anyone's hard drive. Why me?

Dorothea Perry  
Veritas et Aequitas  
**Alt. Email** [msdorothea.perry@gmail.com](mailto:msdorothea.perry@gmail.com)



# EXHIBIT 7

JA1149



Subject: Re: [REDACTED]

From: [REDACTED]

To: zstern@cwa-union.org;

Cc: dorothea.perry@verizon.net;

Date: Wednesday, June 24, 2015 7:20 PM

My new number is 347-260-3112

On Jun 24, 2015 1:35 PM, "Zelig Stern" <zstern@cwa-union.org> wrote:

I will call him right now

On Wed, Jun 24, 2015 at 1:34 PM, Dorothea Perry <dorothea.perry@verizon.net> wrote:

[REDACTED] is recently separated from CV and would like to help unionize TSG. He has many friends left in the group.

Please give him a call at 718 809 0570.

Dorothea Perry

Veritas et Aequitas

Alt. Email msdorothea.perry@gmail.com



# EXHIBIT 8

JA1151



**Subject:** Re: Update  
**From:** Dorothea Perry <dorothea.perry@verizon.net>  
**Date:** 6/25/2015 10:22 AM  
**To:** Zelig Stern <zstern@cwa-union.org>

Remember you can also count on [REDACTED]

Please give her a call at [REDACTED]

Dorothea Perry  
Veritas et Aequitas  
**Alt. Email** [msdorothea.perry@gmail.com](mailto:msdorothea.perry@gmail.com)

On Thursday, June 25, 2015 9:34 AM, Zelig Stern <zstern@cwa-union.org> wrote:

Hey Dorothea,  
Just wanted to give you a quick update on your case. It has been assigned to a Board Attorney Matt Jackson. He is part of the trial team at the trial against Cablevision we are currently engaged in regarding Brooklyn techs. As soon as we know when the trial will end or break, he will have you come in and give an affidavit. Gay will get in touch with you before then and explain everything. She is in the middle of a trial against Cablevision right now which is why she has not been in touch with you. You should hear more within a week.

Also I called [REDACTED] and left a message but I just saw that he has a new # so I will try him there right now.

Solidarity  
Zelig



# EXHIBIT 9


JA1153



**Subject:** Union is the New Black  
**From:** Dorothea Perry <dorothea.perry@verizon.net>  
**Date:** 7/12/2015 11:04 AM  
**To:** Dorothea Perry <dorothea.perry@verizon.net>

If you are not up on NetFlix' original series maybe now is a good time to watch. You will learn a few things about what unions mean to you. Have you called Zelig Stern yet? Do you want to speak to the NLRB field attorney?

Union Is the New Black: Labor Organizing in Orange Is the New Black, And What It Means For You

 image

Union Is the New Black: Labor Organizing in Orange Is th.

In its third season with Netflix, Orange Is the New Black has had a significant effect on America's consciousness regarding: race, women and incarceration.

View on [www.huffingtonpost.com](http://www.huffingtonpost.com) Preview by Yahoo

Dorothea Perry  
Veritas et Aequitas  
**Alt. Email** [msdorothea.perry@gmail.com](mailto:msdorothea.perry@gmail.com)



# EXHIBIT 10

JA1155



**Subject:** Re: Recent Union Updates  
**From:** Dorothea Perry <dorothea.perry@verizon.net>  
**Date:** 8/21/2015 2:15 PM  
**To:** Dorothea Perry <dorothea.perry@verizon.net>

I have some interesting news for you all. Today, the NLRB issued an official complaint against Cablevision for illegally terminating me; a trial will begin soon. I will not be naming any of my fellow technicians. It is my belief that Val was unfortunately terminated because of me, especially since Gil tried to compel Val to tell him every time I wrote to James Dolan. How could Val know anything when I never consulted with him before, during, or after drafting my letters to Dolan or Panno? Val was never involved in anything I did but I believe management terminated him because he was supposed to know. ridiculous. I have been trying to get the NLRB to look into Val's case but because he is "management" and was not engaged in "union activity" they can not offer him any recourse. I'm still pushing that envelope.

The news of the complaint today was overshadowed by my conversation with an unnamed supervisor, who shall remain unnamed for the course of this email. I called the unnamed supervisor to advise him/her that the NLRB would offer him/her protections under the law. The details of why they would shall remain undisclosed at this point but know that I did not solicit any assistance from anyone to draft my communications to Dolan or Panno. This morning I felt like someone stabbed me in my heart when the unnamed supervisor told me in no uncertain terms "they did not have anything to do with what I was going through and that my stress was my own" The unnamed person went on, long story short, to tell me "not to call their phone number anymore" They said they knew I tried to get Val involved too. Wow!!! That left me practically in tears because I considered the person a friend. My question to them, in response, was simple "when there is a war, you must know there will be casualties, right?" Cablevision is at war with unions. I was a casualty of that war.

The person went on to tell me that the "technicians do not want a union and they are all happy now since they have meetings now with management, on a regular basis. They said people are no longer being terminated because of NPS'. If that is the case, then my battle wounds have not been received in vain. I told the unnamed person that if that be the case management has reversed themselves because of what I set off, not of their own volition. I further advised the person that Cablevision has a pattern of playing nice with staff to dissuade them from union considerations. The person went on to say "the staff doesn't want the union and that the information about the lanyards was wrong because supervisors in different call centers chat online" What he didn't know was that CWA pretty much wrote off Jericho because most, if not all of Jericho techs, are fearful and have not shown a willingness to be involved with them. The most CWA resolved to do for the techs at Jericho was show them how to organize, and let them know there is strength in numbers. Get your strength up people!

As much as my heart pained to have this person reverse themselves on me and tell me they are "management and will not get involved", I quickly deleted their number, wiped a tear from my eye, and said immediately after "BYE [REDACTED] - Keep it pushin" I also reluctantly deleted Val's number. Trust no one, do not trust management or anyone referring to themselves as management.



You hear of people enlisting in the military and defecting because they never thought they would see battle. Then you hear of people doing two, three, or four tours of duty because they are bout-a-bout, gangsta, thugged out mo - fo's. This aint my first tour of duty and it may not be my last. I am not a defector. I went to bat for [REDACTED] although he was separated from the company. I addressed NPS with Dolan, and other matters of staff concern, including unions, although I myself was not on a write up or a final. Why? Because Dolan said I could. Call it stupid if you want, but in this country you need people like me. People that stand by their convictions and risk it all to bring about a change. I have no qualms about taking on Cablevision in court with or without that unnamed defector. Some people you think is rolling with you, aint really about that fight, no matter how much lip service they give you. If you're in a similar situation, do not dismiss them as being un-useful, they are let them hold your coat and watch you whip ass.

In a few I will go over and speak to the NLRB field attorney, Matt Jackson. I will ask Matt to treat said unnamed supervisor as a hostile witness and force the protections of the law on him/her because if I do not and their name comes up, and it will, they will be without it. They will, almost certainly, be targeted for dismissal.

As this will be my last communication to all of you too, remember one thing and let it go viral, I did not start this fight but I'm damn sure gonna finish it.

Inline imageNo disrespect!

Dorothea Perry  
Veritas et Aequitas  
**Alt. Email [msdorothea.perry@gmail.com](mailto:msdorothea.perry@gmail.com)**

On Wednesday, August 19, 2015 3:00 PM, Dorothea Perry <dorothea.perry@verizon.net> wrote:

My complaint has the okay to move forward. A trial date has been set. If you did not already know although Cablevision "fired" me, they did offer me a separation package which I rejected. They have since then offered me a settlement which I have rejected. The settlement and the separation package were exactly the same which is almost a joke. My trial date is being set. I will keep you posted.

Remember unless you are involved in union activity and can show it, you will not have any protections under the NLRB laws. Supervisors can also have some protections if they offer testimony or cooperate with the NLRB, otherwise they have no protections.

Additional union activities you should be aware of.

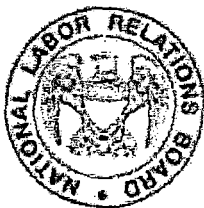
[REDACTED]



Remember, YOU ARE VERY POWERFUL!!!!

Dorothea Perry  
Veritas et Aequitas  
Alt. Email [msdorothea.perry@gmail.com](mailto:msdorothea.perry@gmail.com)

—Matt\_Jackson\_Field\_Attorney.png—



United States Government  
National Labor Relations Board  
Region 29

**MATTHEW A. JACKSON**  
FIELD ATTORNEY

2 MetroTech Center  
5th Floor  
Brooklyn, NY 11201

(718) 330-2148  
Fax (718) 330-7579  
[matthew.jackson@nrlb.gov](mailto:matthew.jackson@nrlb.gov)

—blob.jpg—





Attachments:

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Labor Board Issues another Complaint Against Cablevision_2.docx	159 KB
Matt_Jackson_Field_Attorney.png	34.2 KB
blob.jpg	85.7 KB



# EXHIBIT 11

JA1160



**Subject:** Meet

**From:** Zelig Stern <zstern@cwa-union.org>

**Date:** 9/22/2015 3:59 PM

**To:** Zelig Stern <zstern@cwa-union.org>

**BCC:** Dorothea Perry <dorothea.perry@verizon.net>, [REDACTED]



# EXHIBIT 12

JA1162



**Subject:** Correct this email please  
**From:** <dorothea.perry@verizon.net>  
**Date:** 10/1/2015 4:30 PM  
**To:** Tim Dubnau <tdubnau@cwa-union.org>, Zelig Stern <zstern@cwa-union.org>

[REDACTED]

also add [REDACTED]

Dorothea Perry  
Veritas et Aequitas  
**Alt. Email** [msdorothea.perry@gmail.com](mailto:msdorothea.perry@gmail.com)



# EXHIBIT 13



**Subject:** [REDACTED]  
**From:** <dorothea.perry@verizon.net>  
**Date:** 10/1/2015 5:09 PM  
**To:** Dorothea Perry <dorothea.perry@verizon.net>

Wonder where [REDACTED] disappeared to? She is with me at an NYC agency, under the protection of the largest union in New York City. To her credit she knew it was time to make a move, especially when she had no union protection and an employer that blatantly violates employee rights, and disregards the employee handbook. Now she has matched her salary, has paid time leave, benefits including union benefits, and more family time. She is now an unionized employee! I am so glad that she believed in me when I asked for her resume. I am happy she united with me to fight the union busters at Cablevision.

I reached out to another tech to give him the same opportunity. NO resume yet. Never say I did not try.

I told y'all I had experience with unions. I have been a union member for 12 years. I brought Cablevision to my hood, Brooklyn, to face the music and tell it all to the National Labor Relations Board. It cost me nothing for legal representation. I have always understood the right to organize that is granted to us under federal law. For those reasons I have asked you to trust me, and trust in CWA. I want to help you, but it starts with you helping yourself. It does not hurt you to be protected and have an organizing party (CWA) fight for your rights, fight against unfair metrics, disciplines, and illegal terminations. Call 212.344.2515, ask for Zelig Stern or Tim Dubnau.

Oh by the way, I've learned that more than half the call center is on a write up. Amazing! Y'all gonna take that?

Dorothea Perry  
Veritas et Aequitas  
Alt. Email [msdorothea.perry@gmail.com](mailto:msdorothea.perry@gmail.com)



# EXHIBIT 14



**Subject:** I got fired for YOU  
**From:** <dorothea.perry@verizon.net>  
**Date:** 10/2/2015 11:44 AM  
**To:** Dorothea Perry <dorothea.perry@verizon.net>

I want you all to know that I did not have any employment issues. I had no verbals, no write-ups, no final warnings. I felt like I was in a position to say NO MORE. Stop using the workers and forcing unfair metrics, and labor practices on them. Stop terminating people for rules you change on a day to day basis. I advocated for employees that had been terminated. I pushed the issues that technicians were complaining about utilizing the open door policy on page 36 of the employee handbook, further supported by James Dolan's 2012 directive to email jdolan@cablevision.com. That email was intercepted by Lisa Gillingham who reached out to Paul Hilber to "get on this". Within 16 minutes. I had an escalation file. They contacted Yvette Panno. The first thing they pulled was my ADA records.

You still think you don't need a UNION? You can now see my May 11th email to James Dolan for yourself. After you read it call CWA. Have someone fight for your rights. fight against unfair metrics, disciplines, and illegal terminations. Call 212.344.2515, ask for Zelig Stern or Tim Dubnau.

Dorothea Perry dorothea.perry@verizon.net via yahoo.com  
to me, jdolan

May 11

Dear Mr Dolan:

It has been three years since I last wrote you (see below). For a few years after your address to the TSG department, and the concerns over unionization, it appeared that the unfair management and supervision practices of the department relaxed in favor of the employees. Now it appears that TSG is again reverting back to the tactics it used to dismiss employees on a regular basis. As an example, we were told for a couple of years that we should take the time needed to resolve all of the customer's issue, and not to rush the customer off the phone because our performance would no longer be based on handle time. Low and behold the handling time metric is once again becoming a metric used to evaluate our performance. TSG management seemed befuddled that they could not use the metric to terminate people and would even occasionally attempt to coach on the handling time. I once reminded a supervisor that "Mr. Dolan said to take the time to address the customer's concerns", and that is what I try to do. Our customers appreciate the time and need the attention which is why Optimum always scores high marks with J.D. Powers. To begin coaching on handle time will cause many techs to once again rush the customers off the phone leading to many more repeat calls and dissatisfaction with our technical support team. For your information, the low whispers of unionization have begun in the department because the staff is feeling less secure in their positions.

Another matter of concern is the new Genesys system which overall is a nice tool but using it as a timestamp to mark the start of a shift seems to me will cause some legal issues unless the system is perfected. Years ago the Department of Labor won a lawsuit (2004) against Cablevision because employees were told to sign on early to make sure they can begin working at the start of their shift resulting in extra off the clock minutes for which staff was not compensated. Due to the introduction of Genesys employees are once again being told they can sign on a little early to ensure they are completely signed on and clocked in on time. Even if you sign into your computer at your appointed time, you are given two minutes to complete the computer sign-on process and also the Genesys sign-on process or else you are late. I have personally sat at a computer that I've never used, signed on at my appointed time, and the sign on process to the computer, because a new profile was being built, took at least 3 minutes to complete. By TSG standards, I was late because the computer applications did not open quick enough to allow me to sign onto Genysis.

Why? I have no control over the systems deployed to TSG or the applications installed. For this reason, the management of TSG believes that allowing employees to sign on early will resolve this issue. Have they considered the legal implications? Probably not. Has Cablevision been given a waiver by the Department of Labor since the last lawsuit? It seems there is a simple fix called single sign-on. Sign into the computer and it signs you into Genesys immediately, or else give a grace period longer than two minutes for sign on, or else continue to use the aspect for punching in.

Sometimes it is the new managers that are not aware of the history of Cablevision that repeat undesirable actions which lead to unnecessary legal actions. TSG management should be advised that "Extra minutes of off-the-clock time before or after a shift can result in a substantial back wage liability for employers," Corlis

Sellers, a Northeast regional administrator for the department, told Newsday.

CWA000017

JA1167

12/24/2015 1:41 PM



Moving forward, regarding VOC (Voice of the Customer), I can not deny that the introduction of VOC is a good idea, but it seems that TSG representatives have an 80 percent chance of failure and only a 20 percent chance of being successful. A score of 1 - 6 is a failure, 7 - 8 is neutral and doesn't advance our position, so it might as well be used to fail us. We must score 9 or 10 to be successful or else we are not contributors. What sense does that make when a customer could potentially give a rep low marks because they don't like the pricing plans or have issues with the service? How is the representative responsible for pricing or faulty systems, infrastructure? Why should a tech fail because the customer feels that Optimum is failing them? This is once again a tool that will cause many good techs to be terminated because the VOC system has not been perfected. I do not believe that management/supervisors really understand the system themselves, but it's a tool to "measure employee performance" and a good tool to use as grounds for dismissal of people struggling to make it. The supervisors are forced to use the tool by management who do not really seem to know or understand how to harvest the data to move the company forward. Again, the little people suffer while they try to figure out what to do with the data. The suffering of the little people is what makes the whispers of "unionization" become a reality.

What bothers me most about TSG is when I am told "don't contact Mr. Dolan". And I ask, "Why? Have we dirty little secrets in this department?" Maybe it is time for you to take another look at TSG, have another walk through, and yet another conversation with our (TSG) department. It would certainly be appreciated.

Thank you,

Dorothea Perry  
TSG / Level 2 (OV/OOL/IO) ,  
917.328.3442

Dorothea Perry  
Veritas et Aequitas  
Alt. Email [msdorothea.perry@gmail.com](mailto:msdorothea.perry@gmail.com)



# EXHIBIT 15<sup>169</sup>



**Subject:** NEWS FLASH

**From:** <dorothea.perry@verizon.net>

**Date:** 10/2/2015 2:38 PM

**To:** Dorothea Perry <dorothea.perry@verizon.net>

The company admitted to firing 67 people in the last two years alone, even though a review of their records shows that only 3 people received "Requires Improvement" ratings in their 2014 Year-End Reviews. They seem to be casting people aside for little or no reason.

When you have no one to advocate for you. there is little to no job security.

Dorothea Perry

Veritas et Aequitas

**Alt. Email** [msdorothea.perry@gmail.com](mailto:msdorothea.perry@gmail.com)



# EXHIBIT 16

JA1171



**Subject:** Cablevision Workers United call in Dec. 10th @ 9 pm to hear how CWA is protecting your jobs

**From:** <dorothea.perry@verizon.net>

**Date:** 12/9/2015 1:30 PM

**To:** Dorothea Perry <dorothea.perry@verizon.net>

**CC:** Dorothea Perry <msdorothea.perry@gmail.com>

If you want to be on the CWA (listen only) conference call text **Cablevision** to 69866 by 2:30 pm today. You will get a call tomorrow by 9pm to alert you that the conference is in session. No one will know you are on the call, it is completely anonymous.

Cablevision Workers United

Dear Brothers and Sisters,

Join hundreds of your coworkers for a Union Hall conference call to find out what the CWA and Cablevision workers are doing to protect our jobs during the sale of Cablevision. During the transition of the sale it is extremely important to stay informed. You will not want to miss this call, but you must register to be on it. All participation will be confidential. To register for the call provide your information on this link and the operator will contact you at the time of the call.

**Dec. 10th, 9:00pm**

Feel free to pass this information along to your coworkers.

For more information about the CWA call us at 347 337-1741

**Cablevision Workers United**

CWA District 1

80 Pine Street, 37th Floor

New York, NY 10005

[www.thecablevision99.org](http://www.thecablevision99.org)

Dorothea Perry

Veritas et Aequitas

**Alt. Email** [msdorothea.perry@gmail.com](mailto:msdorothea.perry@gmail.com)



**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

JAMES G. PAULSEN, Regional Director of  
Region 29 of the National Labor Relations  
Board, for and on behalf of the NATIONAL  
LABOR RELATIONS BOARD,

Petitioner,

-against-

CSC HOLDINGS, LLC and CABLEVISION  
SYSTEMS CORP.,

Respondents.

Case No. 15-cv-7054 (DRH) (AKT)

**DECLARATION OF ROBERT COMSTOCK**

ROBERT COMSTOCK, declares under penalty of perjury, pursuant to 28  
U.S.C. § 1746, that the following is true and correct:

1. I am an Executive Vice President of CSC Holdings, LLC  
("Cablevision"). I submit this declaration in opposition to the application for a  
preliminary injunction seeking to reinstate Dorothea Perry ("Perry") to employment  
with Cablevision.
2. In my current position, I am responsible for all aspects of the  
infrastructure that supports the delivery of services to Cablevision's customers. My  
responsibilities include overseeing, among other things, Cablevision's field service  
operations, construction, outside plant, logistics, Optimum stores, contact centers,  
billing and back office, network management, WiFi execution, telecommunications  
network management, and all customer-facing operations in the entire geographic area  
serviced by Cablevision.



3. Cablevision, through various related entities, is engaged in the business of providing cable television, high speed internet and telephone services to business and residential customers in parts of New York City, New Jersey, Long Island and Connecticut. Cablevision's services in New York City are provided pursuant to certain Franchise Agreements between Cablevision Systems New York City Corporation ("Cablevision NYC") and the City of New York, one of which covers the Bronx and one of which covers portions of Brooklyn (the "Franchise Agreements"). For all purposes relevant to this affidavit, the Bronx and Brooklyn franchise agreements are identical. A copy of the Brooklyn Franchise Agreement, effective on or about November 30, 2011, is annexed as Exhibit A.

4. The Franchise Agreements are contracts entered into by the City with Cablevision NYC to enable Cablevision NYC to provide a service (cable television and ancillary services) using the City's streets and other rights of way. The Franchise Agreements require Cablevision NYC to pay certain fees to the City of New York and also impose on Cablevision NYC certain standards and regulations regarding, among other things, the construction and maintenance of the cable system infrastructure, the scope and nature of the services provided, and the level and quality of customer service.

5. The New York City Department of Information Technology & Telecommunications ("DoITT") is an agency of the City of New York. As set forth in the Franchise Agreements, the New York City Council has authorized DoITT to grant nonexclusive franchises to commercial entities for the provision of cable television services on behalf of the City of New York.



6. According to its website, DoITT “manages telecommunications franchises for New York City, including cable television, public pay telephones, mobile telecommunications and local high capacity telecommunications.” The “telecommunications franchises” which are managed by DoITT include the Franchise Agreements with Cablevision NYC described above.

7. Under the terms of the Franchise Agreements, DoITT has substantial regulatory authority over Cablevision NYC’s performance of its duties and obligations under the Franchise Agreements. For example, under the Franchise Agreements, Cablevision NYC is required to provide “a valuable and attractive competitive option in terms of the quality, scope and technical sophistication of the services it provides.” (Brooklyn Franchise Agreement § 7.1). More specifically, Cablevision NYC is required to meet specified standards regarding the quality of all work it performs and all materials used (Brooklyn Franchise Agreement § 6.1), the timing and promptness of service installations (Brooklyn Franchise Agreement § 5.4), the scope and characteristics of the cable system (Brooklyn Franchise Agreement § 6.2), and the performance of periodic tests and inspections (Brooklyn Franchise Agreement § 6.3). Cablevision NYC also is obligated to maintain various records concerning its performance of services under the Franchise Agreements, including but not limited to records regarding all complaints, service calls and installations (Brooklyn Franchise Agreement § 11.4).

8. The Franchise Agreements further provide that in the event of “any breach, default, failure or other noncompliance” by Cablevision NYC with the terms and conditions of the Franchise Agreements, Cablevision NYC can be made subject to



various sanctions, including but not limited to revocation of the Franchise Agreements (Brooklyn Franchise Agreement § 15).

9. In addition to the regulatory oversight performed by DoITT with respect to all of the matters described above, the Franchise Agreements include various specific grants of authority to DoITT. By way of example:

(a) Under Section 1.26 of the Brooklyn Franchise Agreement, DoITT is “the agency responsible under the New York City Charter for the continuing administration of the franchise granted hereunder, or any successor thereto.”

(b) Under Section 2.9 of the Brooklyn Franchise Agreement, Cablevision NYC is required to provide evidence of liability insurance coverage “Reasonably satisfactory to DoITT.”

(c) Under Section 6.3.2.1 of the Brooklyn Franchise Agreement, Cablevision NYC is required to perform periodic “Proof of Performance” tests to demonstrate its compliance with the standards set forth in the Franchise Agreements, and Cablevision NYC’s performance under these Proof of Performance tests is evaluated under standards established in consultation with DoITT.

(d) Under Section 6.4 of the Brooklyn Franchise Agreement, Cablevision NYC is required to cooperate with DoITT as the mediator of certain disputes between Cablevision NYC and other franchisees.



(e) Under Section 10.3 of the Brooklyn Franchise Agreement, Cablevision NYC is required to submit quarterly reports to DoITT showing the basis for its computation of the franchise fee.

(f) Under Section 11.3 of the Brooklyn Franchise Agreement, Cablevision NYC is required to provide quarterly and annual reports to the Commissioner of DoITT.

(g) Under Section 16.5 of the Brooklyn Franchise Agreement, Cablevision NYC is required to conduct periodic surveys of the community's views regarding the nature and adequacy of its services, which surveys are to be developed with the participation of DoITT.

(h) Under Section 18.8 of the Brooklyn Franchise Agreement, Cablevision NYC is required, among other things, to: "comply with (ii) all local laws and all rules, regulations, orders, of the City and of DoITT."

(i) Under Section 18.18 of the Brooklyn Franchise Agreement, the Commissioner of DoITT is designated as "the City official that is responsible for the continuing administration of this Agreement."

10. It is my understanding based on testimony given by Perry in a proceeding before the National Labor Relations Board ("NLRB") in or about October 2015 that Perry is currently employed by DoITT and has been employed continuously by DoITT since in or about April 2004. It is my further understanding that Perry applied for employment with and was hired by Cablevision in or about July 2004, and that her employment was terminated on or about June 8, 2015.



11. Attached as Exhibit B is a true and correct copy of the Cablevision employment application completed and signed by Perry on or about July 14, 2004. The employment application instructs the applicant, among other things, to “List all employment for the past seven years and explain any gaps in such employment.” As Perry’s employment application shows, she failed to disclose that she worked at DoITT even though she was employed by DoITT at the time she completed, signed and submitted the application. She also failed to disclose to Cablevision that she had been employed by DoITT since in or about April 2004. It is my understanding that Cablevision did not become aware of those facts until Perry’s testimony during the proceeding before the NLRB.

12. I understand that in this proceeding the NLRB seeks to compel Cablevision to reinstate Perry’s employment with Cablevision as a Technical Support Representative. Because of DoITT’s role as the New York City agency responsible for regulating Cablevision NYC and managing the Franchise Agreements between New York City and Cablevision NYC, it would be prejudicial to Cablevision for Perry to be returned to employment at Cablevision while she continues to be employed at DoITT for a number of reasons discussed further below.

13. Cablevision maintains a Conflicts of Interest Policy, a true and correct copy of which is annexed as Exhibit C (the “Conflicts Policy”). The Conflicts Policy addresses, among other things, the subject of an employee’s simultaneous employment with another employer. That policy provides, among other things: “[A]voiding conflicts of interest is critical to the proper operation of the Company. Not



surprisingly, this topic is a centerpiece of the Company's Code of Business Conduct and Ethics."

14. More specifically, with respect to outside employment, Section 3 of the Conflicts Policy prohibits Cablevision employees from engaging in outside employment that may "compromise the employee's obligation to act in the best interests of the Company" or that "impair[s] or otherwise interfere[s] with the employee's ability to perform his or her job for the Company at his or her optimal level (e.g., the employee takes a nightshift job that impairs the employee's ability to perform his job for the Company during the day)."

15. The Conflicts Policy instructs employees to discuss and disclose any potential conflict of interest issues with their supervisors, and obligates employees to escalate any "difficult or sensitive" conflict of interest issues to Cablevision's Legal Department. As noted above, Perry failed to disclose her employment with DoITT to Cablevision as required on the Cablevision employment application and under the Conflicts Policy.

16. It is my understanding that the City of New York also has rules regarding potential conflicts of interest caused by outside employment. As both Cablevision and the City recognize, therefore, there is an inherent potential for conflict when the same person works for both a regulator and a regulated entity, and thus, Perry's simultaneous work for Cablevision and for DoITT has the potential to present Perry with irreconcilable duties to her two employers.



17. A conflict arises, for example, from the fact that Cablevision would be paying on a regular basis an employee of the government body responsible for managing Cablevision's Franchise Agreements and regulating the activities of Cablevision and its competitors under such Franchise Arrangements.

18. In addition, Perry's simultaneous employment with Cablevision and DoITT could prevent her from acting in the best interests of Cablevision and from performing her job responsibilities in an objective, independent and impartial manner. As part of her employment, Perry would receive and have access to sensitive and confidential business information of Cablevision. Perry could be inclined to share such confidential information (or even unfounded complaints) about Cablevision with DoITT in order to further DoITT's regulatory mission or even simply to further her employment prospects with DoITT. Similarly, as a DoITT employee, Perry could potentially come into contact with non-public information about DoITT's regulatory agenda, DoITT's management of Cablevision's franchise agreements or DoITT's activities with respect to Cablevision's competitors. If Perry acted on this information, for example by sharing it with Cablevision employees (even inadvertently), that could present serious legal and ethical risks for Cablevision in addition to compromising DoITT's regulatory mission.

19. Given Perry's demonstrated willingness to disregard disclosure-related obligations in connection with her employment by Cablevision, the risk of her breaching her ethical obligations as an employee of Cablevision with respect to respecting the confidentiality of information is not just theoretical.



20. Any sharing of confidential and proprietary Cablevision information by Perry with DoITT would, of course, lack the contractual and due process mechanisms that DoITT otherwise must follow to obtain information from one of the franchisees that it regulates.

21. Moreover, had Perry timely disclosed her employment with DoITT at the time she submitted her employment application, Cablevision would have had an opportunity to evaluate this potential conflict and take appropriate action. Because of Perry's deliberate omission of such critical information, Cablevision did not have an opportunity to evaluate the potential for conflict in Perry's employment, and thus Perry was in continuing violation of company policy throughout her tenure at Cablevision.

22. This conflict of interest analysis is heightened at this particular time as DoITT plays a central role in reviewing any transaction that is covered by Section 13.1 of the Franchise Agreement, and the City and DoITT have asserted authority to approve the proposed sale of Cablevision to Altice, N.V. which is pending approval before the FCC and state regulatory authorities. While Cablevision has not acceded to that authority, and, in fact, vigorously disputes it, Cablevision is currently in discussions with DoITT regarding the Altice transaction and has provided DoITT certain confidential information relating to the transaction to help DoITT understand this transaction.



23. It is respectfully submitted that allowing Perry to be simultaneously employed by Cablevision and DoITT would present a conflict of interest that would be prejudicial to Cablevision and therefore one that Cablevision would not waive.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: January 11, 2016  
New York, New York

Robert Cornstock



# EXHIBIT A



**Cable Franchise Agreement  
by and between  
The City of New York  
and  
Cablevision Systems New York City Corporation  
for the Borough of Brooklyn**



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THIS AGREEMENT (this "Agreement") is entered into by and between the City of New York ("the City"), a validly organized and existing political subdivision of the State of New York, and Cablevision Systems New York City Corporation, a corporation duly organized under the applicable laws of the State of Delaware ("Franchisee").

WHEREAS, the City is a "franchising authority" in accordance with Title VI of the Communications Act, (see 47 U.S.C. § 522(10)) and is authorized to grant one or more nonexclusive cable franchises pursuant to Article 11 of the New York Public Service Law, as amended, and Title 16, Chapter VIII, Parts 890.60 through 899, of the Official Compilation of Codes, Rules and Regulations of the State of New York, as amended; and

WHEREAS, pursuant to Section 363(a) of the New York City Charter (the "City Charter"), franchises are to be awarded by the City in accordance with the provisions of authorizing resolutions adopted by the City Council of the City (the "City Council"); and

WHEREAS, the City Council adopted Resolution No. 538 on September 27, 2006 (the "Resolution") which authorizes, until September 27, 2011, the Department of Information Technology and Telecommunications ("DoITT") to grant nonexclusive franchises for the provision of cable television services; and

WHEREAS, on September 16, 1998 a franchise agreement was executed between the City and Franchisee (or the predecessor in interest to Franchisee) granting a franchise for the provision of certain services in the Franchise Area (as hereinafter defined), pursuant to the terms described therein, said franchise agreement referred to hereinafter as the "1998 Franchise"; and

WHEREAS, the scheduled term of the 1998 Franchise expired on October 8, 2008, and Franchisee sought a renewal of its Franchise rights to provide Cable Services in the Franchise Area (as hereinafter defined) pursuant to 47 U.S.C. § 546; and

WHEREAS, the City, pursuant to the terms of the Cable Act (as hereinafter defined), has identified the City's future cable-related community needs and interests and, pursuant to the City Charter, has issued a solicitation for cable television franchises (the "Solicitation") to which Franchisee responded; and

WHEREAS, in response to the Solicitation, Franchisee submitted materials regarding the terms and conditions for its continued operation and maintenance of its Cable System and provision of Cable Services (as hereinafter defined) and other matters; and

WHEREAS, Franchisee and the City have completed arm's-length negotiations regarding the terms and conditions pursuant to which the City intends to grant to Franchisee, and Franchisee intends to accept from the City, a franchise (the "Franchise") described generally in Section 4.1 hereof and more specifically renewing Franchise rights pursuant to 47 U.S.C. § 546 and pursuant to the complete terms of this Agreement; and

WHEREAS, the City has, with respect to such proposed renewal franchise, complied with the New York State Environmental Quality Act ("SEQRA") (Section 8-0101 *et seq.* of the New York State Environmental Conservation Law), the SEQRA regulations set forth at Part 617 of



Title 6 of the New York Code of Rules and Regulations, and the City Environmental Quality Review process (Chapter 5 of Title 62 and Chapter 6 of Title 43 of the Rules of the City of New York); and

WHEREAS, the Department of City Planning has determined pursuant to Section 363(c) of the City Charter that franchise renewals granted pursuant to and consistent with the terms of the Solicitation would not have land use impacts or implications and therefore is not subject to the Uniform Land Use Review Procedure ("ULURP") set forth in Section 197-c of the City Charter; and

WHEREAS, Franchisee has completed all required submissions under the City's VENDEX process, and the City's review thereof has been completed; and

WHEREAS, pursuant to Section 371 of the City Charter, the Franchise and Concession Review Committee (the "FCRC") held a public hearing on a proposed franchise for Franchisee, with respect to the Franchise Area, and including terms of an agreement memorializing the terms and conditions of the proposed franchise; and

WHEREAS, said hearing before the FCRC was held within 30 days of the date that DoITT filed a proposed franchise agreement with the FCRC; and

WHEREAS, a notice of said hearing and a summary of the terms and conditions of the proposed Franchise were properly published in the City Record; and

WHEREAS, at least 15 days, excluding Sundays and legal holidays, elapsed between publication of said hearing notice and summary in the City Record and the commencement of such hearing before the FCRC; and

WHEREAS, before the FCRC hearing, the requirements regarding publication of notice of such hearing as set forth in Section 371 of the City Charter were met; and

WHEREAS, the FCRC has approved the grant to Franchisee of the Franchise and the terms of this Agreement as described herein; and

WHEREAS, pursuant to Section 895.1 of Title 16 of the New York Code of Rules and Regulations, Franchisee's technical ability, financial condition, and character were considered and approved by the City in a full public proceeding affording due process; Franchisee's plans for its Cable System (as hereinafter defined) were considered and found to be adequate and feasible in a full public proceeding affording due process; the Franchise complies with the franchise standards of the NY PSC (as hereinafter defined); and the Franchise is nonexclusive; and

WHEREAS, the City, following said public proceeding, determined that this Franchise granting Franchisee a nonexclusive franchise complies with the franchise standards set forth in the Cable Act, the Resolution, the aforementioned Public Service Law, the regulations of the NY PSC (including any necessary waivers that the parties may seek and obtain) and all other applicable laws and regulations; and



WHEREAS, the City and Franchisee have determined that this Agreement complies with the franchise standards set forth in the Resolution, Section 363 of the City Charter, Section 626 of the Cable Act as amended, Section 222 of the Public Service Law, the regulations of the NY PSC, and all other applicable laws and regulations; and

WHEREAS, the City and Franchisee have reached agreement on the terms and conditions set forth herein and the parties have agreed to be bound by those terms and conditions.

NOW, THEREFORE, in consideration of the foregoing clauses, which clauses are hereby made a part of this Agreement, the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged,

**THE SIGNATORIES DO HEREBY AGREE AS FOLLOWS:**

**1. DEFINITIONS**

Except as otherwise provided herein, the definitions and word usages set forth in the Cable Law and the Communications Act are incorporated herein and shall apply in this Agreement. In addition, the following definitions shall apply:

1.1 *Access Channel (or "PEG Channel")*: Any Channel that is a Public Access Channel or a Government/Educational Access Channel.

1.2 *Additional Provided Services* shall be defined as provided in Section 4.1(b) hereof.

1.3 *Affiliate*: Any Person who, directly or indirectly, owns or controls, is owned or controlled by, or is under common ownership or control with, Franchisee.

1.4 *Application*: Application of Franchisee for a Cable Television Franchise in the City of New York, filed on or about December 3, 2010 in response to the Solicitation.

1.5 *Agreement*: This Agreement, including the Appendices attached hereto and all amendments or modifications hereof.

1.6 *Basic Service Tier*: Any service tier which includes the retransmission of local television broadcast signals.

1.7 *Borough President*: The Borough President of the Borough of the City which constitutes the Franchise Area or in which the Franchise Area lies.

1.8 *Cable Act*: The Cable Communications Policy Act of 1984 (codified at 47 U.S.C. §§ 521-573), as of the Effective Date and as it may thereafter be amended.

1.9 *Cable Law*: The Cable Act, Article 11 of the New York Public Service Law, as amended, and Title 16, Chapter VIII, Parts 890.60 through 899, of the Official Compilation of Codes, Rules and Regulations of the State of New York, as amended, to the extent authorized under and consistent with federal law.



1.10 *Cable Service or Cable Services*: Shall be defined herein as it is defined under 47 U.S.C. § 522(6), as of the Effective Date and as it may thereafter be amended.

1.11 *Cable System or System*: Shall be defined herein as it is defined under 47 U.S.C. §522(7), as of the Effective Date and as it may thereafter be amended.

1.12 *Cablevision Franchise Agreements*: This Agreement plus the other franchise agreement, executed simultaneously herewith, between the City and Franchisee

1.13 *Cablevision Franchisees*: Franchisee in its capacity as the Franchisee hereunder as well as in its capacity as franchisee under the other Cablevision Franchise Agreement.

1.14 *Cablevision Service Area*: The collective area covered by the "Franchise Areas" as that term is defined in each of the Cablevision Franchise Agreements, except that with respect to the Franchise Agreement covering the Borough of Brooklyn, the "Cablevision Service Area" shall be defined as including the Initial Service Area and not the portions of the Franchise Area outside that Initial Service Area.

1.15 *Channel*: Shall be defined herein as a portion of the electromagnetic frequency spectrum which is used in the Cable System and which is capable of delivering a television channel.

1.16 *Channel Position*: The numeric, alphanumeric, or such other position or designation on a television receiver, tuner, converter or similar device, which is selected by each Subscriber using a particular device to receive a specific Channel.

1.17 *City*: The City of New York.

1.18 *Closing*: Shall be defined as provided in Section 2.1 hereof.

1.19 *Commissioner*: Shall mean the Commissioner of DoITT, the Commissioner's designee or any successor thereto.

1.20 *Communications Act*: The Federal Communications Act of 1934, as amended, including, without limitation, the Cable Act.

1.21 *Community Access Organization (or "CAO")*: Shall mean the nonprofit corporation that has been designated by the Borough President, as described in Section 8.4 of this Agreement, for the purposes described in that section.

1.22 *Controlling Person*: A Person with the ability to exercise de facto or de jure control over day-to-day policies and operations or the management of Franchisee's affairs.

1.23 *Corporation Counsel*: The Corporation Counsel of the City, the Corporation Counsel's designee, or any successor thereto.



1.24 *EDC*: The New York City Economic Development Corporation, or a successor entity of comparable role.

1.25 *Effective Date*: Shall have the meaning set forth therefor in Section 3.1 hereof.

1.26 *DoITT*: The New York City Department of Information Technology and Telecommunications, currently the agency responsible under the New York City Charter for the continuing administration of the franchise granted hereunder, or any successor thereto.

1.27 *1998 Franchise*: The Cable Television Franchise Agreement for the Borough of Brooklyn between the City of New York and Cablevision Systems New York City Corporation dated October 8, 1998.

1.28 *FCC*: The United States Federal Communications Commission, or successor governmental entity thereto.

1.29 *FCRC*: The Franchise and Concession Review Committee of the City of New York.

1.30 *Force Majeure*: An event or events reasonably beyond the ability of Franchisee to anticipate and control. This includes, but is not limited to, severe or unusual weather conditions, strikes, labor disturbances and disputes, war or act of war (whether an actual declaration of war is made or not), insurrection, riots, act of public enemy, incidents of terrorism, acts of vandalism, actions or inactions of any government instrumentality or public utility including condemnation, accidents for which Franchisee is not primarily responsible, fire, flood, or other acts of God, or work delays caused by waiting for utility providers to service or monitor utility poles to which Franchisee's Cable System facilities are attached, and unavailability of materials and/or qualified labor to perform the work necessary.

1.31 *Franchise*: The rights of Franchisee as described in this Agreement, subject to the terms, conditions, obligations and duties to which such rights are subject under this Agreement.

1.32 *Franchise Area*: The Borough of Brooklyn, including the entire existing territorial limits thereof and such additional areas as may be annexed or acquired so as to be included in said Borough.

1.33 *Franchisee*: Cablevision Systems New York City Corporation and its lawful and permitted successors, assigns and transferees (including those for which consent of the City is required under Article 13 hereof).

1.34 *Government/Educational Access Channel*: An Access Channel which Franchisee shall make available to the City, at no charge, as provided, and for the purposes described, in Article 8 of this Agreement.

1.35 *Gross Revenue*:



- (i) Gross Revenue includes, without limitation (unless expressly excluded hereinafter), all revenue, as determined in accordance with generally accepted accounting principles, which is derived by Franchisee (or any Affiliate) from the operation of the Cable System to provide Cable Service in the Franchise Area, including:
  - a) all such Subscriber revenues earned or accrued, net of bad debts, with respect to any and all forms and tiers of Cable Service (including, but not limited to, Basic Service, expanded service tiers and premium services) provided by Franchisee over the Cable System in the Franchise Area, including, without limitation, Cable Service related program guides, the installation, disconnection or reconnection of Cable Service; revenues from late or delinquent charge fees; Cable Service related or repair calls; the provision of converters, DVRs, remote controls, additional outlets and/or other Cable Service related Subscriber premises equipment, whether by lease or fee;
  - b) Video on demand and pay-per-view; and
  - c) Charges described to Subscribers as attributable to "franchise fees."
- (ii) Gross Revenue shall also include all advertising revenue which is received directly or indirectly by Franchisee or any Affiliate from or in connection with the distribution of any service over the System (and including, without limitation, compensation for use of studio or other facilities and equipment associated with production and distribution of any programming or advertising to be distributed as part of a Cable Service). Advertising commissions paid to third parties shall not be netted against advertising revenue included in Gross Revenue.
- (iii) Gross Revenue shall also include revenues from the lease of channel(s) or channel capacity.
- (iv) Gross Revenue shall also include compensation received by Franchisee that is derived from the operation of the Cable System to provide Cable Service with respect to commissions that are paid to Franchisee or an Affiliate providing Cable Service under this Franchise as compensation for promotion or exhibition of any products or services on the Cable System, such as a "home shopping" or similar channel, subject to the exceptions described below.
- (v) In determining Gross Revenue, revenues generated as the result of agreements with Affiliates (for example, agreements with Affiliates that are program service providers pursuant to which Franchisee is entitled to sell advertising time on Affiliate-programmed channels) shall be deemed to be the revenue that would be derived from prevailing market arms-length agreements (with entities that are not Affiliates) of the same type.
- (vi) Gross Revenue as defined in this Section 1.35 is intended to include not merely revenue received in cash form but also the fair market value of any consideration



received in non-monetary (i.e., barter) transactions for goods or services, such as, for example, in return for the provision of Cable Services for which no or a reduced monetary payment is received.

- (vii) Gross Revenues derived from Cable Services provided over the Cable System in the Franchise Area that are provided to Subscribers as part of a bundle of services that include Non-Cable Services shall be treated in accordance with Section 10.5 hereof.
- (viii) Notwithstanding anything to the contrary in this Section 1.35, to the fullest extent permitted by applicable law and during whatever portion of the Term such is permitted by applicable law, each reference to the term "Cable Services" as used throughout this Section 1.35 shall be deemed to also include any Additional Provided Service to the extent permitted under applicable law (recognizing, however, that it is Franchisee's position, which position Franchisee fully reserves, that under applicable law as of the date this Agreement is executed, such inclusion any Additional Provided Service would result in franchise compensation under this Agreement that would exceed the maximum permitted by applicable law). The City and Franchisee each reserve all of their respective rights with respect to the treatment of revenues derived from the provision of Additional Provided Services, and the City agrees that, absent any modification or clarification of existing law, the City will resolve any dispute between the City and Franchisee as to the treatment of such revenues for any Additional Provided Service solely by means of an action for declaratory judgment before a court or regulatory agency having competent jurisdiction over such matter, and shall not contend that Franchisee's provision of Additional Provided Services without the payment, under this Agreement, of franchise or other fees with respect to such services constitutes a Default as defined in Article 15 of this Agreement, unless the City has first prevailed in such a declaratory judgment action, and the decision in such action has become final without any further right of appeal.
- (ix) Except as provided above, Gross Revenue shall *not* include:
  - a. the revenue of any Person, including without limitation, a supplier of programming to Franchisee, to the extent said revenue is also included in Gross Revenue of Franchisee (the intention of this exclusion being to avoid the double-counting of the same revenue twice for the purposes of calculating franchise compensation under this Agreement);
  - b. revenues received by any Affiliate or other Person in exchange for supplying goods or services used by Franchisee to provide Cable Service over the Cable System;
  - c. bad debts written off by Franchisee in the normal course of its business and in accordance with generally accepted accounting principles (provided, however, that bad debt recoveries shall be included in Gross Revenue during the period collected);



- d. refunds, rebates or discounts made to Subscribers or other third parties;
- e. any revenue of Franchisee or any other Person which is received directly from the sale of merchandise through any Cable Service distributed over the Cable System, provided, however, that any portion of such revenue which represents or can be reasonably attributed to a Subscriber fee or a payment for the use of the Cable System paid to Franchisee or an Affiliate for the sale of such merchandise shall be included in Gross Revenue;
- f. the sale of Cable Services on the Cable System for resale in which the purchaser is required to collect cable Franchise Fees from purchaser's customer;
- g. the sale of Cable Services to customers, which are exempt, as required or allowed by the City including, without limitation, the provision of Cable Services to public institutions as required or permitted herein;
- h. any foregone revenue which Franchisee chooses not to receive in exchange for its provision of free or reduced cost cable or other communications services to any Person, including, without limitation employees of Franchisee and public or other institutions designated in this Franchise (provided, however, that in any case where its services are provided for no or reduced cash payments but such services are provided in exchange for trades, barter, services or other items of value, the value of such trades, barter, services or other items received shall be included in Gross Revenue, except in the case of services provided to the CAO);
- i. sales tax collections or similar collections from Subscribers of taxes of general applicability imposed upon Franchisee or upon Subscribers by the LFA, a state, federal or any other governmental entity, if required to be collected by Franchisee and remitted to the taxing entity;
- j. taxes imposed on Subscribers by law, which Franchisee is obligated to collect;
- k. sales of capital assets or sales of surplus equipment;
- l. program launch fees; and
- m. directory or Internet advertising revenue including, but not limited to, yellow pages, white pages, banner advertisement and electronic publishing.



1.36 *Information Services*: Shall be defined herein as it is defined under 47 U.S.C. §153(20), as of the Effective Date and as it may thereafter be amended.

1.37 *Initial Service Area*: The area that falls within the boundaries of the following Community Districts located in the Borough of Brooklyn: Community Districts 3, 4, 5, 8, 9, 11, 12, 13, 14, 15, 16, 17 and 18, as such boundaries existed on July 19, 1983.

1.38 *Landlord*: The term "landlord" shall mean and include the owner or owners of the freehold of the premises or lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, agent, or any other person, firm or corporation, directly or indirectly in control of a dwelling, or any designee of the foregoing enumerated Persons formally authorized to approve physical alterations, improvements or modifications to such dwelling including the installation of Franchisee's facilities.

1.39 *Liabilities*: Any and all encumbrances, defects of title, easements, mortgages, security interests or agreements, pledges, liens, charges, damages, expenses, penalties, fines, costs, conditional sales agreements, title retention agreements, claims, assessments, restrictions, liabilities, obligations, debts, commitments, undertakings, taxes, covenants and responsibilities of every kind and character, known and unknown, contingent or otherwise, or arising or existing by operation of law, by judicial decree or judgment, by contract or otherwise, including, without limitation, those evidenced by contracts, agreements, memoranda, indentures, mortgages and security agreements, and conditional sales and other title retention agreements. "Liability" or "Liabilities" shall also mean any damage or loss to any real or personal property of, or any injury to or death of, any Person or the City.

1.40 *Local Franchise Authority (or "LFA" or the "City")*: The City of New York, New York, or the lawful successor, transferee, or assignee thereof.

1.41 *Multiple Dwelling*: Shall have the meaning set forth therefor in New York State Multiple Dwelling Law § 4(7). "MDU" or "Multiple Dwelling Unit" shall mean a household unit within a Multiple Dwelling.

1.42 *Non-Cable Services*: Any service that does not constitute Cable Service pursuant to law, including, but not limited to, Information Services and Telecommunications Services.

1.43 *Non-Residential Subscriber*: A Subscriber that is not a Resident.

1.44 *Non-Standard Installation*: Any installation which does not constitute a Standard Installation as defined in Section 1.54 hereof.

1.45 *Normal Business Hours*: Those hours during which most similar businesses in the community are open to serve customers. In all cases, "normal business hours" must include some evening hours at least one night per week and/or some weekend hours.

1.46 *NYPSC*: The New York State Public Service Commission.

1.47 *PEG*: Public, Educational, and Governmental.



1.48 *Person*: An individual, partnership, association, joint stock company, trust, corporation, or governmental entity.

1.49 *Public Access Channel*: An Access Channel which Franchisee shall make available to the CAO, at no charge, as provided, and for the purposes described, in Article 8 of this Agreement.

1.50 *Public Rights-of-Way*: The surface of, and the space above and below, any and all streets, avenues, highways, boulevards, concourses, driveways, bridges, tunnels, parks, parkways, waterways, docks, bulkheads, wharves, piers, public grounds and public places or waters within and belonging to the City and any other property within the City, to the extent to which there exist public easements or public rights of way. Public Rights-of-Way do not include the electromagnetic spectrum above the surface of a right-of-way with regard to cellular or other nonwire communications or broadcast services.

1.51 *Resident*: An occupant who: (i) resides in a dwelling which has or is entitled to receive from the City a residential certificate of occupancy, including, without limitation, a private dwelling, class A multiple dwelling, or an interim multiple dwelling; or (ii) has continuously resided in the same building as a permanent resident and who takes occupancy pursuant to a lease (or other similar arrangement) of at least six (6) months duration. For purposes of this Agreement, the terms "private dwelling," "class A multiple dwelling," and "interim multiple dwelling" shall have the same meaning as they have or may have in the New York State Multiple Dwelling Law, as such law may from time to time be amended.

1.52 *Residential Subscriber*: A Subscriber that is a Resident.

1.53 *Solicitation*: Shall be defined as it is defined in the seventh Whereas clause of this Agreement.

1.54 *Standard Installation*: Any installation to a household that constitutes a "home passed," except that with respect to households within a Multiple Dwelling building, only if Franchisee has obtained building access and prepositioned such of its facilities in such Multiple Dwelling building as are necessary for serving requesting households within such building.

1.55 *Subscriber*: A Person (other than the Franchisee or any Affiliate) who lawfully receives Cable Service over the Cable System.

1.56 *Telecommunication Services*: Shall be defined herein as it is defined under 47 U.S.C. § 153(46), as of the Effective Date and as may thereafter be amended.

1.57 *Title VI*: Title VI of the Communications Act, Cable Communications, as amended.

1.58 *Verizon Franchise Agreement*: The franchise agreement between the City and Verizon New York Inc. executed May 29, 2008.



1.59 *Video Programming*: Shall be defined herein as it is defined under 47 U.S.C. §522(20), as of the Effective Date and as it may thereafter be amended.

1.60 *Wholly Owned Affiliate*: Any entity of which 100% of the ownership interest is ultimately held, directly or indirectly, by Cablevision Systems Corporation or any successor of Cablevision Systems Corporation as the entity which has, through ownership interests, ultimate corporate control over Franchisee.

## 2. CLOSING; CLOSING CONDITIONS

2.1 *Closing*: This Agreement shall be executed and the obligations herein shall commence on the closing of this Agreement (herein referred to as the "Closing"). The Closing shall occur on the first day on which all of the following conditions have been met and this Agreement has been fully executed and delivered:

2.2 *FCRC Resolution*: The FCRC shall have adopted a resolution approving this Franchise;

2.3 *Certified Copies of Resolutions*: Franchisee shall have furnished the City with a certified copy of the resolution(s) duly adopted by the Board of Directors or other authorized representative of Franchisee, approving the execution, delivery and performance of this Agreement and approving the execution, delivery and performance of all other documents, certificates, and other instruments required to be furnished to the City by and pursuant to the terms of this Agreement;

2.4 *Opinion of Franchisee's Counsel*: The City shall have received an opinion dated as of the date of the Closing from outside counsel to Franchisee, comparable in substance to that provided in connection with the 1998 Franchise, in form reasonably satisfactory to the Commissioner and the Corporation Counsel;

2.5 *Representations and Warranties*: Franchisee shall have provided the City with a certificate of an officer of Franchisee certifying that the representations and warranties made by Franchisee in this Agreement are true and correct as of the Closing;

2.6 *Government Approvals*: Franchisee shall have provided the City with evidence of approval of the transactions contemplated by this Agreement from any necessary governmental authorities, and all notice periods and waiting periods required by law to pass in connection with such transactions shall have passed, except the certificate of confirmation to be issued or renewed by the NY PSC pursuant to Section 891.4 of the NY PSC regulations and issuance of an FCC CUID;

2.7 *Performance Bond*: Franchisee shall have furnished to the City the renewed Performance Bond, as described in Article 15 hereof;

2.8 *Security Fund/Letter of Credit*: Franchisee shall have taken any necessary actions to continue into the Term the Security Fund/Letter of Credit, pursuant to and as described in Article 15 hereof;



2.9 *Liability Insurance Policy*: Franchisee shall have provided evidence, reasonably satisfactory to DoITT, that it is maintaining its liability insurance policy pursuant to Article 12 hereof;

2.10 *Guaranty*: Franchisee shall have secured and delivered to the Commissioner and the Comptroller a guaranty (the "Guaranty") executed by Cablevision Systems Corporation ("the Guarantor") in the form set forth at Appendix H to this Agreement, which guaranty shall have been authorized, executed and delivered by the Guarantor;

2.11 *W-9 Form*: Franchisee shall have submitted an IRS W-9 form certifying Franchisee's tax ID number;

2.12 *VENDEX*: Franchisee has completed all required submissions under the City's VENDEX process, and the City's review thereof has been completed; and

2.13 *Other Documents*: Franchisee shall have delivered such other documents as are expressly contemplated as deliverable at the Closing by this Agreement and any other documents as may be reasonably requested by the City.

2.14 *Waiver*: To the extent permitted by law, any of the above Closing conditions may be waived by the Commissioner, provided such waiver shall not be a waiver of any substantive requirement of this Agreement as set forth hereinafter.

### 3. EFFECTIVE DATE AND TERM:

#### 3.1 *Effective Date and Term*:

(a) *Effective Date & Scheduled Termination Date*: This Agreement and the Franchise granted herein shall become effective on the date that the NY PSC issues a certificate of confirmation for this Franchise (the "Effective Date"), following the Closing (which certificate Franchisee shall submit within 10 days of the Closing); provided that implementation of this Agreement shall be subject to the applicable registration provisions of City Charter sections 375 and 328. The term (the "Term") of this Agreement and the Franchise granted herein shall run from the Effective Date until (but not including) July 18, 2020 (the "Scheduled Termination Date"), unless the Franchise is earlier terminated as provided herein. Franchisee shall memorialize the Effective Date by notifying the City in writing of the occurrence of said Effective Date, which notification shall become a part of this Franchise.

(b) *Early Termination Option*: If the City's "Applicable Franchise Fee Collections" attributable to any full calendar year, beginning with calendar year 2012, are less than 77.5% of the "Peak Franchise Fee Collections", then the City shall have the option (to be exercised as described below) to terminate this Agreement and the Franchise granted herein on a date which is 15 months after the date the option is exercised as described in subsection (f) below.

(c) *"Applicable Franchise Fee Collections"* is defined as the sum of  
(x) the amounts received by the City from Franchisee pursuant to the first sentence of Section



10.1 of this Agreement, plus (y) the amounts received by the City from the Verizon Franchise franchisee under the first sentence of Section 10.1 of said Verizon Franchise (or successor provision thereof of similar effect), to the extent reasonably attributable to the geographic area covered by the Cablevision Service Area defined in this Agreement, plus (z) the amounts received by the City, from any other franchise or franchises granted by the City for Cable Services, pursuant to a provision comparable to the first sentence of Section 10.1 of this Agreement, to the extent reasonably attributable to the Cablevision Service Area.

(d) *"Peak Franchise Fee Collections"* as of any date is defined as the highest Applicable Franchise Fee Collections received by the City with respect to the Cablevision Service Area in any full calendar year during the Term of this Agreement that has occurred prior to said date.

(e) *Applicability of Federal Renewal Procedures.* In the event that the City exercises the Early Termination Option described in subsection (b) above, the City agrees that the City's determination as to whether such early termination shall be succeeded by a renewal of Franchisee's Franchise rights shall be determined in accordance with the provisions of 47 U.S.C. Section 546 (or successor provisions thereto) as they are in effect at the time, as if the notice contemplated in Section 546(a) thereof had been timely provided, whether or not such notice has actually been timely provided, and the City waives any right it may have to claim that the renewal procedures described in 47 U.S.C. Section 546(b) through (g) would be inapplicable after an exercise of the Early Termination Option because such notice has not been timely provided. Franchisee may, at its discretion, from time to time during the Term provide the City with a conditional notice requesting (as contemplated in 47 U.S.C. Section 546(a)(1)) the commencement of a renewal proceeding consistent with 47 U.S.C. Section 546 if the Early Termination Option is thereafter exercised, and in the event the City exercises the Early Termination Option the City agrees to recognize such conditional notice as having been "timely submission of such notice" as that phrase is used in 47 U.S.C. Section 546(a)(2)(A), but the provision of such conditional notice shall not be necessary for the applicability and enforceability of the City's agreement and waiver as described in the preceding, first sentence of this subsection (e).

(f) *Procedure for Exercise of Early Termination Option:* At any time during the calendar year immediately following a full calendar year for which attributable Applicable Franchise Fee Collections were low enough to trigger the City's Early Termination Option, the Commissioner may, exercise such Early Termination Option by providing written notice to Franchisee, in accordance with Section 18.6 of this Agreement, that the City is exercising its Early Termination Option and that this Agreement and the Franchise granted hereunder shall therefore terminate (unless renewed pursuant to renewal procedures as described in subsection (e) above) on the date which is 15 months from the date of such notice. Franchisee may request documentation from the City showing the City's calculation of the Applicable Franchise Fee Collections and Peak Franchise Fee Collections which resulted in the triggering of the Early Termination Option, and Franchisee may challenge in court the City's determination that the Early Termination Option is applicable. In the event of a challenge in court by Franchisee of the City's determination, this Agreement and the Franchise granted hereunder shall remain in full force and effect pending a final judgment and exhaustion of all appeal rights in



such challenge; provided, however, that in the event the City prevails in the court action: (a) the termination of this Franchise shall be deemed effective 15 months from the date that the City properly provided notice of its exercise of the Early Termination Option; and (b) the provisions of subsection (e) will still apply.

(g) *Inapplicability of Early Termination Option:* In the event the City collects franchise compensation from Franchisee calculated to reflect revenues generated from the provision of services offered by Franchisee to its Subscribers which are the type of services defined under federal law (as of the date this Agreement is executed) as "information services", to an extent comparable to the extent to which it collects franchise compensation hereunder with respect to Cable Services, the provisions of subsections (b), (c), (d), (e) and (f) of this Section 3.1 shall be inapplicable and of no force or effect.

3.2 *Termination Generally:* The termination of this Agreement and the Franchise granted hereunder shall occur upon the earliest to occur of: (i) the Scheduled Termination Date; or (ii) the earlier termination of the Franchise and this Agreement as provided for in this Agreement. The Franchise shall be considered terminated automatically upon any termination of this Agreement as provided hereunder.

3.3 *Renewal on Expiration:* Subject to 47 U.S.C. § 546 and Section 3.1(e) and Articles 14 and 15 of this Agreement, the City reserves the right at the end of the Term to grant, or grant on new terms and conditions, or not grant, renewal of the Franchise without any presumption (other than such as may exist under federal law) in favor of a renewal of the Franchise.

#### 4. GRANT OF AUTHORITY; LIMITS AND RESERVATIONS

##### 4.1 *Grant of Authority:*

(a) The City hereby grants Franchisee, subject to the terms and conditions of this Agreement, a nonexclusive franchise providing the right and consent to install, operate, repair, maintain, remove and replace cable, wire, fiber optic lines or other transmission medium that may be used in lieu of cable, wire or fiber optic lines for the same purposes, and related equipment and facilities, on, over and under the Public Rights-of-Way in order to provide Cable Services. The City and Franchisee agree that this franchise is a grant of the right to provide cable service pursuant to 47 U.S.C. § 541. It is the City's position that authorization to install non-closed path transmission facilities, such as antennae and related equipment, on, over or under the Public Rights-of-Way is not granted pursuant to this Agreement, although Franchisee is permitted to separately seek a franchise granting such authorization. It is the City's position that the franchise granted hereunder does not include the right or consent to use the Public Rights-of-Way for the transmission of any Information Service or Telecommunications Service, unless such authority is expressly granted hereinafter, although to the extent not thus expressly granted hereinafter Franchisee is permitted to separately seek authority from the City granting such authorization. It is the City's position that the franchise granted hereunder does not include the right or consent to install, maintain or operate any computer kiosks or other similar facilities on the Public Rights-of-Way the purpose of which is the reception and use of an Information Service, or any other service, by pedestrians, vehicles or others users or occupants of



the Public Rights-of-Way, although Franchisee is permitted to separately seek authority from the City granting such authorization. It is Franchisee's position that as a matter of currently applicable law (as of the execution of this Agreement) no additional authority from the City is required to provide Non-Cable Services to the extent such are provided using the Public Rights-Of-Way authority granted hereunder.

(b) Without limiting the City's authority to argue that separate and additional franchise rights are required to provide Non-Cable Services where, as in this Agreement, it is the City's position that the right to offer such Non-Cable Services has, by express reservation, not been granted, to the extent Non-Cable Services are in fact provided by Franchisee pursuant to claimed legal authority rather than pursuant to one or more separately granted, express written franchises from the City, such shall be referred to in this Agreement as "Additional Provided Services"

(c) The City and Franchisee each reserve all of their respective rights with respect to Franchisee's provision of Non-Cable Services (including as provided in the preceding subsections (a) and (b)); provided, however, that the City agrees that, absent any modification or clarification of existing law, the City will resolve any dispute between the City and Franchisee as to such Non-Cable Services solely by means of an action for declaratory judgment, and shall not contend that Franchisee's provision of Non-Cable Services without the payment, under this Agreement, of franchise or other fees with respect to such services constitutes a Default as defined in Article 15 of this Agreement.

4.2 *Grant Not Exclusive:* The Franchise and the rights granted herein to use and occupy the Public Rights-of-Way to provide Cable Services shall not be exclusive, and the City reserves the right to grant other franchises for similar uses or for other uses of the Public Rights-of-Way, or any portions thereof, to any Person, or to make any such use itself, at any time during the term of this Franchise. Any such rights which are granted shall not adversely impact the authority as granted under law or this Franchise to provide Cable Service.

4.3 *Franchise Subject to Federal and State Law:* Notwithstanding any provision to the contrary herein, this Franchise is subject to and shall be governed by all applicable provisions of federal and state law as may be amended, including but not limited to the Communications Act. Further, the parties to this Franchise agree that this Franchise is consistent with applicable federal and state law and the parties agree to be bound by the terms hereof.

4.4 *No Waiver:* The failure of either the City or Franchisee on one or more occasions to exercise a right under this Franchise, the Cable Law or other applicable state or federal law, or to require compliance or performance under this Franchise, shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance of this Agreement, nor shall it excuse the other (neither the City nor Franchisee) from compliance or performance, unless such right or such compliance or performance has been specifically waived in writing.

4.5 *Construction of Agreement:*



4.5.1 The provisions of this Franchise shall be liberally construed to effectuate their objectives.

4.5.2 Nothing herein shall be construed to limit the scope or applicability of 47 U.S.C. § 545, as amended.

4.5.3 Should any change to applicable law, rules or regulations have the lawful effect of materially altering the terms and conditions of this Agreement, then the parties shall negotiate in good faith to modify this Franchise to the mutual satisfaction of both parties to ameliorate the negative effects on either party of the material alteration. Any modification to this Franchise shall be in writing and shall be subject to Section 222 of the New York Public Service Law and Title 16, Chapter VIII, Part 892, Subpart 892-1, Section 892-1.4 of the Official Compilation of Codes, Rules and Regulations of the State of New York requiring application to the NY PSC and approval of any modification.

4.6 *Police Powers:* Nothing in this Franchise shall be construed to prohibit the City's reasonable, necessary and lawful exercise of the City's police powers, including, without limitation, in addition to the implementation and enforcement of the provisions of this Agreement and existing applicable laws and regulations, the enactment, adoption, implementation and enforcement of such additional laws and regulations as the City may deem necessary in the exercise of its police power, including without limitation any lawful right to compel relocation of Cable System facilities in the Public Rights-of-Way in the event such facilities interfere with sewer and water line work, road-widenings and other adjustments (such as tree plantings) to the Public Rights-of-Way and to maintain consistency with the location of other utility type facilities (provided that with respect to facilities that have previously been installed with the City's permission in a manner inconsistent with the installation of other utility type facilities in the same area, the Cablevision Franchisees collectively shall not be required during any one year to relocate more than 10% of such previously inconsistently installed facilities installed by Cablevision Franchisees), and the provisions of New York City Administrative Code § 6-115.1 (the "MacBride Principles"); provided, however, that such laws and regulations are reasonable and not materially in conflict with the privileges granted in this Franchise and consistent with all federal and state laws, regulations and orders.

4.7 *Restoration and Inspection of Municipal Property:* In order to avoid interference with the City's ability to deliver public services, any municipal property damaged or destroyed by Franchisee in the exercise of its rights hereunder shall be promptly repaired or replaced by Franchisee and restored to pre-existing condition.

4.8 *Restoration of Subscriber Premises:* Franchisee shall ensure that each Subscriber's premises are restored to at least their pre-existing condition if damaged by Franchisee's employees or agents in any respect in connection with the installation, repair, provision or disconnection of Cable Service, provided that Franchisee receives notice of such damage within a reasonable period of time thereof.



## 5. DEPLOYMENT; PROVISION OF CABLE SERVICE

5.1 *Residential Deployment:* As of the Effective Date, the System shall have passed all households that exist as of the Effective Date within the Initial Service Area, except as the Commissioner has approved specific exceptions to such requirement. For purposes of this Agreement a household is "passed" when functioning System facilities have been installed in the street fronting the building in which such household is located, such that Cable Service could be provided to such building in conformance with the provisions of Section 5.3 (assuming no delays in gaining lawful access to any necessary private right-of-way).

5.2 *Availability of Cable Service to Residents:* Franchisee shall make Cable Service available, in accordance with Section 5.3 hereof, to all residential dwelling units in the Initial Service Area, at Franchisee's expense, except that Franchisee may charge a standard installation fee. In addition, Franchisee shall continue to make service available to occupants of all buildings in the Initial Service Area to which Franchisee was providing service, as of January 1, 2011, even if such occupants are not defined as Residents, provided such were defined as Residents in the 1998 Franchise. The parties hereto agree that the terms of this Section 5.2. satisfy the minimum standards set forth in 16 NYCRR Section 895.5.

5.3 *Provision of Cable Service:* Subject to the exceptions set forth in Subsection 5.4 hereof, Franchisee shall make Cable Service available to all households in the Initial Service Area. Franchisee agrees that it shall not discriminate between or among any individuals in the availability of Cable Service or based upon the income of residents in a local area.

5.4 *Installations of Cable Service – Standard Installations:* Franchisee shall perform all Standard Installations of Cable Service within seven (7) business days after any request for a Standard Installation is received by Franchisee, unless a later date is agreed to with the requesting potential residential Subscriber or except as set forth below.

5.4.1 If Franchisee is unable to fulfill a potential residential Subscriber's request for Standard Installation of Cable Service within seven (7) business days of Franchisee's receipt of such request or the later date as agreed to with the requesting potential residential Subscriber (as the case may be), Franchisee shall promptly provide notice to such potential residential Subscriber setting forth: (i) the basis for Franchisee's inability to perform the requested Standard Installation within seven (7) business days or the later date as agreed to with the requesting potential residential Subscriber (as the case may be); and (ii) the date by which Franchisee anticipates performing such Standard Installation. Such notice shall be provided in oral, written, electronic or other format acceptable to the Commissioner; provided, however, that, subject to Subsection 5.5 below, in no event shall Franchisee fulfill such Standard Installation request subsequent to the later of: (i) the date which is seven (7) business days from the date which is seven (7) business days following a potential Subscriber's initial request for Standard Installation or the later date as agreed to with the requesting potential residential Subscriber (as the case may be); or (ii) a further later date agreed to with the Subscriber. All Standard Installations will be in accordance with applicable regulations governing appropriate grounding and connection of equipment to ensure reception of Cable Service.



5.4.2 Consistent with the requirements of Appendix A, Franchisee will offer Subscribers "appointment window" alternatives for arrival to perform all Standard Installations.

5.5 *Installations of Cable Service – Non-Standard Installations:* Franchisee shall perform all Non-Standard Installations of Cable Service within six (6) months after any such request is received by Franchisee from a potential residential Subscriber, unless either a later date is agreed to with the requesting potential residential Subscriber or Franchisee advises the requesting potential residential Subscriber of the current unavailability of Cable Service at the location as set forth in Subsection 5.4.1, except as set forth below.

5.5.1 If Franchisee is unable to fulfill a potential residential Subscriber's request for Non-Standard Installation of Cable Service within six (6) months of Franchisee's receipt of such request or the later date as agreed to with the requesting potential residential Subscriber (as the case may be), Franchisee shall promptly provide notice to such potential residential Subscriber setting forth: (i) the basis for the current unavailability of Cable Service at the requesting location; and (ii) a good faith estimate of the date by which Franchisee believes that Cable Service may be available at the location. Such notice shall be provided in oral, written, electronic or other format acceptable to the Commissioner; provided, however, that, subject to Subsection 5.6 below, in no event shall Franchisee fulfill such Non-Standard Installation request subsequent to the later of: (i) the date which is six (6) months from the date which is six (6) months following a potential Subscriber's initial request for Non-Standard Installation or the later date as agreed to with the requesting potential residential Subscriber (as the case may be); or (ii) a further later date agreed to with the Subscriber.

5.6 *Exceptions:* Franchisee's Cable Service availability obligation as set forth in Section 5.3 shall be subject to the following exceptions: (A) the household served is not yet a "home passed" as that phrase is used in this Agreement, (B) for periods of Force Majeure; and (C) periods of delay caused by Franchisee's inability, after good faith efforts, to obtain valid legal authority to access any MDU in the Franchise Area for the purpose of providing Cable Service to units within such MDU on other than commercially unreasonable terms and conditions with respect to each such MDU.

5.7 *Commercial Unreasonability:* The phrase "commercially unreasonable terms and conditions" means any one or more of the following circumstances:

5.7.1 The landlord is imposing buildout, installation and/or maintenance requirements to serve the MDU that require a financial investment which would result in a return on invested capital ("ROIC") by four (4) years from the date on which installations within the MDU would become Standard Installations that is less than Franchisee's weighted average cost of capital, wherein  $ROIC = (\text{Net Income} + \text{after tax interest}) / \text{Net Average Operating Assets}$ ;

5.7.2 The landlord is requiring removal or other remediation of hazardous materials;



5.7.3 The landlord, despite the legal requirements of Public Service Law Section 228, is demanding payment above the compensation contemplated by Section 228; and

5.7.4 A bulk sales, exclusive marketing or other arrangement is in effect in the MDU that reduces Franchisee's reasonably anticipated penetration rate resulting in a return on invested capital ("ROIC") by four (4) years from the date on which installations within the MDU would become Standard Installations that is less than Franchisee's weighted average cost of capital, wherein  $ROIC = (\text{Net Income} + \text{after tax interest}) / \text{Net Average Operating Assets}$ .

5.8 *Access:* The phrase "Franchisee's inability, after good faith efforts, to obtain valid legal authority" as used herein shall be understood in the context, where applicable, of the legal obligations of landlords under Section 228 of the New York State Public Service Law ("Section 228"), or any successor provision of like effect, and therefore in instances in which Franchisee believes that a landlord is in violation of Section 228, Franchisee is obligated to provide such landlord with notice of Section 228 and the legal obligations imposed upon such landlord pursuant thereto and pursue remedies available thereunder as appropriate in Franchisee's judgment, acting reasonably.

5.9 *Additional Procedures:* In each case in which Franchisee needs to obtain access to the property in response to a request for Cable Service, Franchisee shall undertake (and document in written form) the following steps within the following time periods:

5.9.1 Send promptly (but in no event later than thirty (30) days after receipt of a request for Cable Service) to the property owner or managing agent notice of its intent to wire for Cable Service;

5.9.2 Attempt to negotiate a survey date and wiring method with the property owner or agent;

5.9.3 If not yet successful in obtaining access, send a second (2nd) notice of intent to wire including specific reference to Franchisee's access rights, and attempt to wire;

5.9.4 If the property owner or agent prevents wiring, request assistance from the Commissioner and/or the NY PSC; and

5.9.5 If access is not provided within one hundred and eighty (180) days of the first notice to the property owner or agent of intention to wire, file a petition pursuant to 16 NYCRR §898.4 seeking an order for entry to the property.

5.9.6 The Commissioner may waive, or extend the dates for complying with, the requirements of this Section 5.9 upon a showing of good cause by Franchisee.

5.10 *Periodic Reevaluation:* In the event that Franchisee delays service availability to any MDU in the Franchise Area pursuant to the terms of Section 5.6, Franchisee agrees that it will conduct periodic reevaluations of each such MDU to determine whether



circumstances have changed in a manner that would enable Franchisee to obtain valid legal authority to access such MDU on commercially reasonable terms and conditions.

5.11 *Service to Non-Residential Blocks:* Franchisee represents that as of the date of its execution of this Agreement, Franchisee has installed, and maintains in place, fiber optic lines and/or coaxial cable lines on all blocks within the Initial Service Area, including (without limitation) all blocks where no Residents reside, which lines are capable of providing Cable Service to potential Subscribers (Residential or Non-Residential) on each such block. Franchisee agrees to maintain such facilities on all such blocks throughout the term of this Agreement.

5.12 *Cable Service to Previously Unserved Non-Residential Buildings:* To the extent that Franchisee has not previously provided Cable Service in any non-Residential building and there is a non-Residential occupant of such building ready, willing and able to subscribe to Franchisee's Cable Service at the standard commercial rate, then at the City's written request provided pursuant to Section 18.6 hereof, Franchisee will provide such Cable Service to such occupant (at its standard commercial subscription rate) including construction of any facilities necessary to provide such Cable Service; provided, however, that:

(a) the amount that all Cablevision Franchisees shall be collectively obligated to expend in construction of such facilities in order to provide such Cable Service at the City's written direction shall not exceed an amount which would reduce to zero the Commercial Account, as defined in Section 5.12.1 below and as it stands at the time such written request is made by the City, and

(b) Franchisee shall not be obligated to provide such Cable Service at the City's written direction as described above unless (i) prior to providing the written notice described above, the City has contacted the owner of the building identified in such notice and obtained assurances from said owner that Franchisee will be given access to such building to install its facilities consistent with the Franchisee's standard construction practices, and (ii) thereafter said owner actually provides such access.

The City and Franchisee each agree to use good faith efforts and to cooperate with one another to obtain building access as described in the preceding subsection (b), provided that such "good faith efforts" and cooperation on the part of Franchisee do not include taking the lead or undertaking initial outreach in obtaining the assurances described in clause (i) of the preceding subsection (b).

5.12.1 The "Commercial Account" shall be defined as a dollar amount which initially equals, as of the Effective Date, Six Hundred Thousand Dollars (\$600,000), and is thereafter (i) reduced by each amount expended by Franchisee in compliance with this Section 5.7 or the following Section 5.13 ("amount expended" as that term is used in this subsection and Section 5.13 below means each of Franchisee's marginal out-of-pocket costs expended to construct facilities to serve such building plus 8% to reflect overhead costs), and (ii) increased on each anniversary of the Effective Date by the lesser of Six Hundred Thousand Dollars (\$600,000) or such amount as brings the Commercial Account to its maximum amount of Six Hundred Thousand



Dollars (\$600,000); provided, however, that the parties acknowledge and agree that the Commercial Account shall not require that the funds comprising such Account be segregated into a separate account.

5.13 *Service to the Entry Point for Previously Unserved Non-Residential Buildings:* As an alternative to requesting that Franchisee provide Cable Service to a non-Residential occupant of a building as described in Section 5.12 above, which request under Section 5.12 would obligate Franchisee (subject to all the limitations described above in Section 5.12) to install at its expense all facilities necessary to provide such Cable Service, the City may at its option, make a more limited request that Franchisee install facilities in a non-Residential building (provided that the building is less than twenty stories in height) to the point of entry into the building but not within the building itself, in which event Franchisee would not be obligated to provide Cable Service to any occupant in the building unless and until Franchisee, the building owner, and/or occupants in the building commit sufficient resources to fund installation of facilities within the building itself that are needed to provide Cable Service to occupants. In the event of a request by the City under this Section 5.13, the amount expended by Franchisee to serve such building shall reduce the Commercial Account as contemplated in clause (ii) of Section 5.12.1 above to the extent such expenditures are attributable to facilities up to the point of entry to the building and not within the building itself (plus the contemplated markup to reflect overhead set forth in Section 5.12.1, as calculated on such attributable expenditures).

To the extent that Franchisee is required to provide service to buildings pursuant to an agreement with the CAO for use by the CAO, such construction shall be eligible for credit against the Commercial Account upon a showing by Franchisee that the construction supports the City's economic development plans.

5.14 *Non-Residential Service Planning Meeting:* At the City's request, but not more frequently than once a year, Franchisee will participate in a meeting between the Cablevision Franchisees and City and/or EDC officials to discuss the Cablevision Franchisees' future plans for providing Cable Service to non-Residential areas and buildings in the Cablevision Service Area, in order to facilitate coordination between the City's economic development plans and goals with the plans of the Cablevision Franchisees. Information received at each such meeting by the City and/or EDC from the Cablevision Franchisees regarding the future business plans of the Cablevision Franchisees shall be kept confidential to the fullest extent permitted by law.

5.15 *Services to Municipal and Other Facilities:* Franchisee shall provide Cable Services to the municipal and other facilities specified in Appendix L to this Agreement under the conditions set forth in said Appendix.

## 6. SYSTEM FACILITIES; CONSTRUCTION AND MAINTENANCE

6.1 *Quality of Materials and Work:* Franchisee shall construct and maintain its System using materials of good and durable quality, and in a manner that limits disruption to public use of the Public Rights-of-Way, and all work involved in the construction, installation, maintenance and



repair of the Cable System shall be performed in a safe, thorough and reliable manner and in a manner which maintains the City's property in good condition.

6.2 *System Characteristics:* During the Term hereof, Franchisee's Cable System shall meet or exceed the following requirements:

6.2.1 The System shall initially be designed and operated to provide for a minimum channel capacity of not less than 77 channels on the Effective Date.

6.2.2 The System shall be designed to be an active two-way plant for Subscriber interaction, if any, required for the selection or use of Cable Service.

6.2.3 Franchisee shall throughout the term of this Agreement take all such actions necessary to remain in compliance with Section 7.1 hereof.

6.2.4 The Cable System must conform to all applicable FCC technical performance standards, as amended from time to time, and any other future applicable technical performance standards, and shall substantially conform in all material respects to applicable sections of the following standards and regulations to the extent such standards and regulations remain in effect and are consistent with accepted industry procedures:

6.2.4.1 Cable Law;

6.2.4.2 Occupational Safety and Health Administration ("OSHA") Safety and Health Standards;

6.2.4.3 National Electrical Code; and

6.2.4.4 National Electrical Safety Code ("NESC").

6.3 *Cable System Tests and Inspections:*

6.3.1 Franchisee shall perform all tests necessary to demonstrate compliance with the requirements of the Franchise and as described hereinafter in this Section 6.3. All tests shall be conducted in accordance with federal rules and any applicable United States National Cable Television Association's Recommended Practices for measurement and testing. In the event that the FCC's technical performance standards are repealed or are no longer applicable to the Cable System, such standards shall remain in force and effect until the Commissioner, or a designee thereof, and Franchisee agree to new standards. Further, Franchisee agrees that to the extent the FCC does not adopt technical performance standards for measuring and testing the performance of digital Channels, Franchisee and the Commissioner, or a designee thereof, will confer to develop reasonable, mutually acceptable tests to ascertain whether Franchisee is providing such digital Channels in accordance with accepted industry practices with regard to transmission performance and quality (provided however, that this provision for digital testing shall only be applicable so long as (1) the Commissioner, acting reasonably and in writing at least once every two years, has determined that there is a reasonable continuing need for such testing, (2) the franchisees under all New York City franchises for the



provision of Cable Services are also subject to such testing, and (3) the City is not preempted by federal law from requiring such testing), provided, however, that if the FCC does not adopt technical performance standards for measuring and testing the performance of digital Channels and industry practice allows for more than one method of transmitting digital Channels over a Cable System, then such tests shall be designed to take into account the specific method of transmission utilized by Franchisee to deliver digital Channels over the Cable System.

6.3.2 Franchisee shall conduct tests as follows:

6.3.2.1 Proof of Performance tests on the Cable System at least once every six (6) months or as required by FCC rules, whichever is more often, except as federal law otherwise limits Franchisee's obligation. In consultation with DoITT, the Cable System monitor test points shall be established in accordance with good engineering practices and consistent with FCC guidelines;

6.3.2.2 Special Proof of Performance tests, as limited by the City, of the Cable System or a segment thereof when Subscriber complaints indicate tests are warranted;

6.3.2.3 Tests shall be supervised by a senior engineer of Franchisee, who shall sign all records of tests provided to the City;

6.3.2.4 The City shall have the right to designate a City employee (or a third party consultant operating on the City's behalf, provided that such third party consultant executes, in advance, a nondisclosure agreement in a form reasonably acceptable to Franchisee) to visually inspect Franchisee's Cable System in order to verify compliance with Section 6.1 hereof and witness and/or review all required Proof of Performance Tests. Franchisee shall provide the City with at least two (2) business days' notice of, and opportunity to observe, any such Proof of Performance Tests performed on the Cable System;

6.3.2.5 Franchisee shall retain written reports of the results of any tests required by the FCC, and such reports shall be submitted to the City upon the City's request. The City shall have the same rights the FCC has to inspect Franchisee's performance test data;

6.3.2.6 If any test indicates that any part or component of the Cable System fails to meet applicable requirements, Franchisee, without requirement of additional notice or request from the City, shall take corrective action, retest the locations and advise the City of the action taken and results achieved, and supply the City with a copy of the results within thirty days from the date corrective action was completed; and

6.3.2.7 The Commissioner may, for good cause shown, waive or limit the system test and inspection provisions in this Section 6.3.

6.4 *Interconnection:* Franchisee shall design its Cable System so that it may be interconnected with other cable systems in the City. In order to facilitate the provision of



Access Channel programming to cable television subscribers in New York City, Franchisee shall, with respect to those locations where Access Channel facilities are collocated with Franchisee facilities, use reasonable efforts in cooperating with any and all other holders of Cable Service franchises granted by the City to interconnect with facilities of such other franchisees (provided that Franchisee may require that any holder of another Cable Service franchise granted by the City seeking such interconnection agree to reasonable terms and conditions in regard to such interconnection). Nothing herein shall require Franchisee to interconnect on terms that are not reasonable and/or are not mutually agreeable to the interconnecting parties; provided, however that in the event of disputes among Franchisees regarding interconnection activities or responsibilities, DoITT shall make itself available to mediate such disputes, and Franchisee will cooperate with reasonable efforts by DoITT to thus mediate such disputes.

6.5 *Emergency Alert System:* Franchisee shall comply with the Emergency Alert System ("EAS") requirements of the FCC and the State of New York, including the NY PSC's rules and regulations and the current New York EAS Plan, in order that emergency messages may be distributed over the System.

6.6 *Program Services:* Franchisee shall strive to offer over the Cable System a diversity of video programming services, including, without limitation, a broad category of programming that includes locally-based, not-for-profit, and minority-managed public interest educational programming; provided, however, that nothing contained in this Agreement shall be interpreted as a requirement for provision of specific video programming services (except the requirement for provision of PEG Access Channels).

6.7 *Construction and Maintenance Generally:* Franchisee agrees to exercise its rights as described in Section 4.3 above in accordance with the standards of work and operation as set forth in the following Sections 6.7.1 through 6.7.10, and Appendix E attached hereto and incorporated herein (including Attachment 1 to said Appendix E).

6.7.1 *Quality:* In order to assure that the Public Rights-of-Way and the continuing use by the public thereof is adequately protected, all work involved in the construction, operation, maintenance, repair, upgrade and removal of the System located within the Public Rights-of-Way shall be performed in a safe, thorough and reliable manner using materials of good and durable quality. If, at any time, an entity with applicable authority or jurisdiction reasonably determines that any part of the System located within the Public Rights-of-Way is harmful to the public health or safety, then Franchisee shall, at its own cost and expense, take all steps necessary to correct all such conditions.

6.7.2 *Licenses and Permits:* In order to assure that the Public Rights-of-Way and the continuing use by the public thereof is adequately protected, Franchisee shall have the sole responsibility for diligently obtaining, at its own cost and expense, and thereafter complying with, at its own cost and expense, all permits, licenses or other forms of approval or authorization necessary to construct, operate, maintain, upgrade or repair the System located within the Public Rights-of-Way, including but not limited to any necessary approvals from



Persons to use any privately-owned equipment or other property (including, without limitation, any privately-owned easements, poles and conduits) located within the Public Rights-of-Way.

*6.7.3 Public Works and Improvements* Nothing in this Agreement shall, and nothing in this Agreement is intended to, abrogate the right of the City to perform, or to arrange to have performed, any public works or public improvements of any description or change, or to arrange to have changed, the grades, lines or boundaries of any Public Rights-of-Way. In the event that the System interferes with the installation, upgrade, construction, operation, maintenance, repair, relocation or removal of such public works or public improvements, or such change in grades, lines or boundaries, then Section 4.7 of this Agreement shall be applicable.

*6.7.4 No Waiver:* Nothing in this Agreement shall be construed as a waiver of any codes, ordinances or regulations of the City or of the City's right to require Franchisee, or other Persons using, constructing or maintaining the System, to secure the appropriate permits or authorizations for such use, provided that no fee or charge may be imposed for any such permit or authorization, other than the standard fees or charges generally applicable to all Persons for such permits or authorizations. Any such standard fee or charge shall not be an offset against, or in lieu of, the amounts Franchisee has agreed to pay to the City pursuant to Article 3 of this Agreement.

*6.7.5 Eliminated, Discontinued, Closed or Demapped Streets or Other Public Rights-of-Way:* In the event that all or any part of the Public Rights-of-Way within the Franchise Area is eliminated, discontinued, closed or demapped, or the status of such property otherwise changes so that it is no longer to be included in the category of Public Rights-of-Way, all rights and privileges of Franchisee acknowledged and recognized pursuant to this Agreement with respect to said (formerly) Public Rights-of-Way, or any part thereof, so eliminated, discontinued, closed, demapped or otherwise recategorized, shall cease upon the effective date of such elimination, discontinuance, closing, demapping or other such recategorization and Franchisee shall, at its own expense (unless such elimination, discontinuance, closure or demapping is implemented in a manner which is illegally discriminatory in its effect on Franchisee or unless the Commissioner agrees otherwise), and at the direction of the City and upon reasonable notice from the City, remove any and all of Franchisee's facilities located within such property by a date not later than the effective date of such elimination, discontinuance, closing, demapping or other recategorization or such later date as the City shall direct. If the possible circumstances described in the first clause of the last sentence of Section 4.1(a) of the Verizon Franchise come into effect, the City will endeavor to include among the "terms and conditions" referred to in said last sentence of Section 4.1(a) of the Verizon Franchise provisions comparable to those set forth in this Section 6.7.5 and in the following Section 6.7.6, except to the extent the franchisee under the Verizon Franchise is or has become subject to the obligations described in said provisions as a matter of



law such that inclusion of such in such "terms and conditions" would be unnecessary.

*6.7.6 Protection, Relocation, Alteration of the System:* In the event that the System interferes with a City project involving the Public Rights-of-Way (a "City project involving the Public Rights-of-Way" being defined for these purposes as the installation, construction, upgrade, operation, maintenance, repair, relocation or removal of public works or public improvements affecting the Public-Rights-Of-Way, or a change in the grades, lines or boundaries of any Public Rights-of-Way) at any time during the Term, then Franchisee shall, at its own cost and expense (unless dedicated funds have been provided to the City by another entity specifically for such purpose), or unless the City project involving the Public Rights-of-Way is being implemented in a manner which is illegally discriminatory in its effect on Franchisee, upon reasonable notice from the City, promptly protect or alter or relocate the System, or any part thereof, as directed by the City. In the event that Franchisee, after receipt of reasonable notice, refuses or neglects to so protect, alter or relocate all or part of the System, the City shall have the right, upon notice by the City, to break through, remove, alter, or relocate all or any part of the System without any liability to Franchisee, and Franchisee shall pay to the City the costs incurred in connection with such breaking through, removal, alteration, or relocation.

*6.7.7 City Authority to Move Facilities:* The City may, at any time, in case of fire, disaster or other emergency, as determined by the City in its reasonable discretion, cut or move any fiber optic lines, wires, cable, amplifiers, appliances or other parts of the System on, over or under the Public Rights-of-Way, in which event the City shall not be liable therefor to Franchisee. However, whenever practicable, the City shall, prior to such cutting or moving, notify Franchisee in writing, and if practicable, provide Franchisee an opportunity to perform the work itself, but in any event the City shall, notify Franchisee in writing as soon as possible following any such action.

*6.7.8 Franchisee Required to Move Facilities:* Franchisee shall, upon prior written notice by the City or any Person holding a permit to move any structure, and within the time that is reasonable under the circumstances, temporarily move its facilities in the Public Rights-of-Way to permit the moving of said structure. Franchisee may impose a reasonable charge on any Person other than the City for any such movement of its facilities.

*6.7.9 Protect Structures:* In connection with the construction, operation, maintenance, repair, upgrade or removal of the System in the Public Rights-of-Way, Franchisee shall, at its own cost and expense, protect any and all existing structures belonging to the City and all designated landmark sites, as well as all other structures within any designated historic district. Franchisee shall obtain the prior approval of the City before undertaking any alteration of any water main, sewerage or drainage system, equipment or facility or any other municipal structure on, over or under the Public Rights-of-Way, required because of the



presence of the System. Any such alteration shall be made by Franchisee, at its own cost and expense and in a manner reasonably prescribed by the City. Franchisee agrees that it shall be liable, at its own cost and expense, to replace or repair and restore to its immediately prior condition in a manner as may be reasonably specified by the City, any municipal structure or any other Public Rights-of-Way involved in the construction, operation, maintenance, repair, upgrade or removal of the System that may become disturbed or damaged as a result of any work thereon by or on behalf of Franchisee.

6.7.10 *No Obstruction*: In connection with the construction, operation, maintenance, upgrade, repair or removal of the System, Franchisee shall not, without the prior consent of the appropriate authorities, obstruct the Public Rights-of-Way, or the subways, railways, passenger travel, river navigation, or other pedestrian or vehicular traffic that is using the Public Rights-of-Way.

6.7.11 *Safety Precautions*:

6.7.11.1 Franchisee shall, at its own cost and expense, undertake all necessary and appropriate efforts to prevent accidents at its work sites in the Public Rights-of-Way, including the placing and maintenance of proper guards, fences, barricades, security personnel and suitable and sufficient lighting.

6.7.11.2 Franchisee agrees to apply for (or if already existing, maintain) membership in the Mutual Aid and Restoration Consortium ("MARC") and if accepted for such membership, to execute the then applicable MARC agreement, and be fully active in MARC activities, including participation in MARC alerts, drills and meetings. If it is determined by a court of competent jurisdiction after all appeals have been exhausted that the agreement by Franchisee described in the preceding sentence is, pursuant to federal law, not enforceable against Franchisee, then this provision shall be deemed severed from this Agreement, and this Agreement shall remain in effect as if this provision had not been included.

## 7. COMPETITIVE SERVICE AND TECHNOLOGY

7.1 *Competitive Service and Technology*: Franchisee agrees that, throughout the Term, Franchisee will provide Subscribers, and offer to potential Subscribers, a valuable and attractive competitive option in terms of the quality, scope and technical sophistication of the services it provides pursuant to this Franchise. During the ninety day period prior to the third anniversary of the Effective Date, again during the ninety day period prior to the sixth anniversary of the Effective Date, and then again during the ninety day period prior to the ninth anniversary of the Effective Date, Franchisee shall present the City with a report describing its view of the status of then-current technologies being used nationally and internationally to offer the services that Franchisee offers pursuant to this Franchise, and the Franchisee's efforts, in the



context of such technologies, to assure continuing compliance with the first sentence of this Section 7.1, but in each instance, only upon the request of the City.

## 8. PEG SERVICES

8.1 *PEG Set Aside*: In order to ensure universal availability of Public, Educational and Government Access programming, Franchisee shall provide on the Basic Service Tier use of seventeen (17) Access Channels in total, subject to, and phased in over the Term as set forth below in, this Section 8.1:

8.1.1 Throughout the Term, four (4) Public Access Channels.

8.1.2 Throughout the Term, five (5) Government/Educational Access Channels, one of which is designated by the City for educational Access Channel programming.

8.1.3 In addition to providing the Access Channels described in Sections 8.1.1 and 8.1.2 above, Franchisee shall provide the City with the following additional Access Channels on the Basic Service Tier, subject to the conditions set forth below:

8.1.3.1 Commencing not later than sixty days after the Effective Date and thereafter throughout the Term, Franchisee shall provide: (i) an additional two (2) Public Access Channels; and (ii) one (1) additional Government/Educational Access Channel.

8.1.3.2 Commencing not later than the later to occur of (x) January 1, 2012, and (y) the one hundred eightieth (180<sup>th</sup>) day after Franchisee's receipt of a written request from the City for such additional channels, and then thereafter throughout the Term, Franchisee shall provide to the City: (i) one (1) further additional Public Access Channel; and (ii) two (2) further additional Government/Educational Access Channels.

8.1.3.3 Commencing not later than the later to occur of (x) July 15, 2014, and (y) the one hundred eightieth (180<sup>th</sup>) day after Franchisee's receipt of a written request from the City for such additional channels, and then thereafter throughout the Term, Franchisee shall provide to the City a further additional two (2) Public Access Channels.

8.1.3.4 No single additional Government/Educational Access Channel or additional Government/Educational Access Channels to be provided pursuant to this Section 8.1.3 shall be activated by Franchisee unless (a) the City has provided notice to Franchisee that additional programming is available for each such additional channel, and (b) all existing Government/Educational Access Channels are providing original, non-text, non-duplicative programming for at least eighty percent (80%) of the time between 6:00 AM and 12:00 AM for the preceding six (6) consecutive months. With respect to Public Access Channels, no single additional Public Access Channel or additional Public Access Channels to be provided pursuant



to this Section 8.1.3 shall be activated by Franchisee unless all existing Public Access Channels are providing programming for at least eighty percent (80%) of the time between 6:00 AM and 12:00 AM for the preceding six (6) consecutive months

8.1.4 In the event that one or more Public or Government/Educational Access Channels are not being utilized by the City or the CAO's, the provisions of 16 NYCRR 895.4 (c) (12) shall be applicable.

8.1.5 The City hereby authorizes Franchisee to transmit on the Access Channels the Access Channel programming the City submits to Franchisee for such transmission.

8.1.6 (a) Except as expressly permitted by the Commissioner, all Access Channels shall be provided to subscribers as part of the same tier of Cable Service as are those signals (hereinafter "must-carry signals") carried in fulfillment of the requirements of 47 USC §§ 534 and 535. Provision of Access Channels on "the same tier of service" as must-carry signals, as that concept is expressed in the preceding sentence, shall mean provision of such channels for a package price (for a package of services which include the Access Channels, the must-carry signals, and any other channels Franchisee in its discretion chooses to include in such tier), and in such a manner that Subscribers are able to use the same reception or converter equipment or other equipment or facilities to receive and view the Access Channels as are needed to receive and view the must-carry signals.<sup>1</sup> Notwithstanding the preceding provisions of this subsection, (i) the additional Access Channels required pursuant to Sections 8.1.3, 8.1.3.1, 8.1.3.2 and 8.1.3.3 hereof may at Franchisee's discretion be provided in digital format even if other channels that are part of the Basic Service Tier are provided in analog format (all or some of the initial Access Channels provided pursuant to Sections 8.1.1 and 8.1.2 may also be thus provided in digital format despite provision of other Basic Service Tier channels in analog format but only with the express written consent of the Commissioner after consultation, in the case of a Public Access Channel, with the Community Access Organization, except that such consent shall not be required if such a consent requirement is expressly preempted by federal law), (ii) the Commissioner, in his or her discretion, may approve provision of any Governmental/Educational Access Channel in any manner that varies from said provisions upon a determination that such variance would be in the City's interest, and (iii) provision of Access Channel programming in high definition and video on demand formats as contemplated in this Article 8 may require separate equipment to be used by subscribers who wish to receive programming in such formats.

(b) Subject to applicable law and subject to Franchisee retaining all rights to claim any or all of the requirements of this subsection (b) are pre-empted by state or federal law, Franchisee shall retain throughout the Term the current (as of the Effective Date) Channel Positions for those Access Channels being provided pursuant to the 1998

<sup>1</sup> If not all "must-carry signals" are carried on one tier of service or transmitted via one method, then the "must-carry signals" with which the Access Channels are to be tiered and as provided in the first sentence of this Section 8.1.6(a) shall be those must-carry signals that are offered on the lowest priced tier and/or with the least requirement for any reception or converter equipment.



Franchise, unless the Commissioner in the Commissioner's reasonable discretion approves other Channel Positions upon a written request by Franchisee (with supporting documentation) and after consultation with the CAO in the case of Public Channels. All additional Access Channels supplied pursuant to Section 4.1.02 hereof, shall be set at Channel Positions to be set by mutual agreement of the Commissioner and Franchisee, provided that the location of the Access Channels shall, to the extent feasible, take into account the following factors: consistency with Franchisee's existing and proposed Channel lineup, consistency with the Channel Positions of such channels in the other Boroughs and on the systems of other Franchisees, the interest in the Access Channels to maintain Channel Positions contiguous with one another, and the interest of the public in having Access Channels available at Channel Positions which may encourage the sampling of such Channels by casual viewers, and the interest in having Access Channels available at Channel Positions which otherwise facilitate awareness and viewership of the Access Channels; provided, however, that nothing in this Section 8.1.6.2 shall be construed to require Franchisee to allocate Channel Positions in a manner that conflicts with existing and/or any future applicable law governing the location of Channels, including, without limitation, the signal carriage and positioning requirements set forth in 47 C.F.R. §§ 76.51-76.70 and 47 U.S.C. §§534 and 535, as such may be amended or superseded during the Term of this Agreement.

8.1.7 The City shall provide a suitable video signal and a suitable audio signal for each Government/Educational Access Channel. Franchisee, upon receipt of the suitable video signal, shall provide, install and maintain in good working order the equipment necessary for transmitting the Government/Educational Access Channel signal to the channel aggregation site for further processing for distribution to Subscribers. Franchisee's obligations with respect to such upstream transmission equipment and facilities shall be subject to the availability, without charge to Franchisee, of suitable required space, environmental conditions, electrical power supply, access, pathway, and facilities and such cooperation of the City as is reasonably necessary for Franchisee to fulfill such obligations; provided, however, that neither Franchisee nor the required site work contemplated hereunder shall impose any unreasonable material burdens on the City.

8.1.7.1 Such upstream transmission provided by Franchisee shall comply with applicable FCC standards governing the transport and distribution of Government/Educational Access Channel signals to Subscribers. If Franchisee makes changes to the Cable System that require improvements to Government/Educational Access Channel facilities to continue to be used as they were intended under the terms of this Agreement, then Franchisee shall, without charge to the City, make such changes in either the equipment and facilities referred to in this Subsection 8.1.7.1 or in Franchisee's video channel aggregation point and distribution equipment and facilities in order to permit the continuation of such intended use.

8.1.7.2 The Government/Educational Access Channels shall be placed under the jurisdiction of the Mayor and shall be for the noncommercial use of the City, for noncommercial use by New York City



public schools and the New York City Board of Education and other not-for-profit educational institutions chartered or licensed by the New York State Department of Education or Board of Regents in the Franchise Area as specified by the City.

8.2 *Government/Educational Access Video on Demand:* In addition to the dedicated Government/Educational Access Channels described in Sections 8.1.2 and 8.1.3 hereof, Franchisee shall also provide to the City capacity on its video on demand server equipment, up to maximum capacity of 25 hours of standard definition programming, for Government/Educational use programming on the Government/Educational Access Channels, such that VOD-enabled Subscribers will be able to select and watch such programs on a program-by-program basis using the video on demand system that Franchisee uses to offer other programming on a video on demand basis (such programs, the "VOD Content"). Franchisee's obligation under said sentence shall be limited (i) to the provision of capacity for programming on the Government/Educational Access Channels which is delivered by the City in properly encoded form for use in video on demand systems, and (ii) to the provision of no more than eighteen (18) hours of VOD Content that is not "refreshed content" ("refreshed content" for purposes of this provision is defined as specific programming material that has not been included in VOD Content for more than nine (9) months).

8.3 *High Definition Access Channel:* Commencing no later than ninety (90) days after the Effective Date, one of the Government/Educational Access Channels being provided by Franchisee pursuant to this Section 8 shall, at the City's option, be provided in high-definition format (with a minimum resolution of 720p or 1080p resolution, the choice of such resolution to be at the City's option, provided such format is being used by Franchisee for at least five other high-definition programming services on the System). If the City is not capable of producing and delivering programming in the selected high definition format by the date described in the preceding sentence, then the obligation of Franchisee to transmit such programming in said format shall be delayed until such capability is achieved.

8.4 *Community Access Organizations:* The Brooklyn Borough President has designated an independent, not-for-profit, nonmembership corporation, organized pursuant to the New York Not-for-Profit Corporation Law, to serve as the CAO for the Borough, under whose jurisdiction the Public Access Channels shall be placed for purposes of Article 8 of this Agreement. The CAO shall undertake such activities and shall adopt such rules and regulations as are required, and may adopt rules and regulations not inconsistent with this Agreement, the CAO Agreement (as hereinafter defined), a form of which is attached as Appendix C to this Agreement, the Certificate of Incorporation of the CAO, the By-Laws of the CAO, the rules and regulations of the NY PSC, and applicable law. The CAO shall maintain tax-exempt status under Section 501(c) (3) of the Internal Revenue Code of 1986, as amended.

8.5 *Use of Public Access Channels:* The Public Access Channels for the Borough shall be under the jurisdiction of the CAO. Such Public Access Channels shall be used for the purpose of distributing noncommercial programming by the public and any other Public Access purpose as contemplated by state and federal law.



8.6 *Public Access Interconnection:* Franchisee shall effectuate the interconnection of any Public Access Channel facilities with the Cable System for purposes of transmitting the Public Access Channels contemplated in this Article 8 in accordance with the terms of the CAO Agreements (as hereinafter defined).

8.7 *No Editorial Control by Franchisee:* Consistent with applicable law, Franchisee shall not exercise editorial control over programming or distribution of services over any Access Channel used by any Person(s), so long as such Access Channel is being used for the purposes authorized herein and except where Franchisee is utilizing any such Access Channel pursuant to the fallow time provisions of the Cable Law.

8.8 *Access Channel Quality:* Each Public and Government/Educational Access Channel shall be delivered with transmission quality at least the same as the transmission quality of any other channel on Franchisee's Basic Service tier of service that is not an Access Channel; provided, however, that Franchisee shall have no responsibility to improve upon or modify the quality of any Public or Government/Educational Access Channels content provided to Franchisee by any Public or Government/Educational Access Channel programmer.

8.9 *Government and Educational Access Grant:* Franchisee, together with the other Cablevision Franchisees, shall provide a combined, annual grant payable to the City to be used in support of the local Government/Educational Access Channel capital needs (the "Annual G/E Grant"). The amount of each Annual G/E Grant shall be an amount calculated by Three Million and Fifty Thousand Dollars (\$3,050,000.00), by the number of payment due dates which are scheduled to occur prior to July 18, 2020. The first such annual payment shall be due on the sixtieth (60<sup>th</sup>) day after the Effective Date and each subsequent annual payment to be payable not later than the sixtieth (60<sup>th</sup>) day after each anniversary of the Effective Date, until the aggregate amount of \$3,050,000 has been paid.<sup>2</sup> Such grant shall be used solely by the City for Government/Educational Access Channel capital costs. Upon request by Franchisee, the City shall provide Franchisee with a complete accounting annually of the distribution of funds granted pursuant to this Section 8.9. In addition, the Cablevision Franchisees shall collectively provide \$922,200 in in-kind support for the promotion and advertisement of the Government/Educational Access Channels or such other public purpose as may be determined by the City. Promotional support shall be in the form of the production and/or airing of Public Service Announcements ("PSAs") on Franchisee's cable systems and/or the production and publishing of print advertisements in *Newsday* and/or *am New York*. The City shall have the right to draw up to one quarter of the \$922,200 each year over the first four years of the franchise for such promotional support. The City shall direct the content and placement of the PSAs or print advertisements in consultation with Franchisee, provided that the specific placement of any individual PSA or print advertisement shall be subject to availability and the reasonable approval of Franchisee. The production of PSAs or print advertisements will be valued at cost to Franchisee. The value of air time or print space shall be at the standard rate for other City advertising.

<sup>2</sup> Thus, for example, if the Effective Date occurs on or before May 18, 2011, the amount of each Annual G/E Grant will be \$305,000, and if the Effective Date occurs after May 18, 2011 but before May 19, 2012 the amount of each Annual G/E Grant will be \$338,888.



8.10 *Community Access Grant*: Franchisee shall pay to the CAO certain funding (the "CAO Grant") pursuant to the terms of a Community Access Organization Grant and Use Agreement by and between the CAO and Franchisee (the "CAO Agreement"), attached herein as Appendix C.

8.10.1 Franchisee and the City acknowledge and agree that the CAO Grant, or any portion thereof, shall not constitute or be treated as a deduction or credit against Franchise Fees payable to the City by Franchisee pursuant to this Agreement (nor shall any provision of services or funds to the City pursuant to this Agreement constitute or be treated as such a deduction or credit).

8.10.2 Consistent with applicable federal and state law, the City shall not exercise any editorial control over any programming carried on any Access Channels set aside for the CAO pursuant to this Agreement or the CAO Agreement.

8.11 *Franchisee PEG Liability Immunity*: In accordance with 47 U.S.C. §558, Franchisee shall not incur any liability arising from or in connection with any Access Channels.

8.12 *Recovery of Costs*: To the extent permitted by federal law, Franchisee shall be allowed to recover the costs of the grants referenced in this Article 8 and Section 5.6 from Subscribers and to include such costs as a separately billed line item on the applicable Subscribers' bills. Without limiting the foregoing, if allowed under state and federal laws, Franchisee may externalize, line-item, or otherwise pass-through interconnection and any franchise-related costs to Subscribers.

8.13 *Competitively Neutral*: The Access Channel designation requirements, and provisions for facilities, equipment and support for the Access Channels, as set forth in this Agreement as of the Effective Date of this Agreement are either the same as, or if not the same are competitively neutral when compared to, those of any other cable television franchise agreement entered into by the City authorizing Cable Service within the Franchise Area.

## 9. INET

Requirements for an Institutional Network are set forth in Appendix D.

## 10. FRANCHISE FEES

10.1 *Payment to City*: Franchisee shall pay to the City a Franchise Fee of five percent (5%) of annual Gross Revenue (the "Franchise Fee"). In accordance with Title VI, the twelve (12) month period applicable under the Franchise for the computation of the Franchise Fee shall be a calendar year. Such payments shall be made no later than forty-five (45) days following the end of each calendar quarter. In the event that said payments are not received by the City within forty-five (45) days following the end of the applicable calendar quarter, following at least thirty (30) days written notice from the City that the Franchise Fee has not been paid, Franchisee shall pay interest on such overdue Franchise Fee amount at the then-current interest rate set forth in Section 5004 of the New York Civil Practice Law and Rules



(which as of the date of execution of this Agreement is nine percent (9%) per annum) to the City retroactive to the first day that such Franchise Fee payment was due. Franchisee shall be allowed to submit or correct any payments that were incorrectly omitted, and shall be refunded for any payments that were incorrectly submitted, in connection with the quarterly Franchise Fee remittances within ninety (90) days following the close of the calendar year for which such payments were applicable.

10.2 *Acceptance of Payment:* No acceptance of any such payment shall be construed as an accord that the payment is the correct amount, nor shall such acceptance of payment be construed as a release of any claim the City may have for further or additional sums payable under this Agreement. Nothing herein shall be construed in such a way to affect a waiver by either party of applicable statutes of limitation with respect to Franchise Fee payments.

10.3 *Supporting Information:* Along with each quarterly Franchise Fee payment, Franchisee shall submit to DoITT, or such other entity as the Commissioner may designate, with a copy to the Comptroller, a report in a form reasonably acceptable to the Commissioner (the form of such report that is currently reasonably acceptable is attached hereto as Appendix K) showing the basis for the computation for such quarterly Franchise Fee payment.

10.4 *Limitation on Franchise Fee Actions:* The parties agree that the period of limitation for recovery of any Franchise Fee payable hereunder shall be six (6) years from the date on which payment by Franchisee is due. Franchisee shall maintain the records necessary to confirm the accurate payment of Franchise Fees during this period and during the pendency of any litigation.

10.5 *Bundled Services:* If Cable Services subject to the Franchise Fee required under this Article 10 are provided to Subscribers in conjunction with Non-Cable Services for a single aggregate price, and the total cost of such bundle reflects a discount from the aggregate retail prices of the services contained therein when provided separately, the Franchise Fee shall be applied to the retail price (when sold separately) of the Cable Services in the bundle reduced by no more than a proportionate share of the overall discount.

10.5.1 By way of illustrative example of the formula described in the foregoing Section 10.5, if Cable Service A is sold separately at a price of \$40 a month, Non-Cable Service B is sold separately at a price of \$40 a month and Non-Cable Service C is sold separately at a price of \$40 a month, but the three services when purchased together are sold for a single aggregate price of \$100 a month, the amount of the \$100 per month collected by Franchisee from each Subscriber purchasing the bundle which is to be included under Gross Revenues under this Franchise (i.e., the amount attributable to Cable Service) shall be \$33.33 per month. As a second example, if Cable Service A is sold separately at a price of \$50 a month, Non-Cable Service B is sold separately at a price of \$63 a month, Non-Cable Service C is sold separately at a price of \$74 a month, but the three services when purchased together are sold for a single aggregate price of \$150 a month, the amount of the \$150 per month collected by Franchisee from each Subscriber purchasing the bundle which is to be included under Gross Revenues under this Franchise (i.e., the amount attributable to Cable Service) shall be \$40.11 per month.



10.6 *626 Offset*: The Franchise Fee as defined herein shall not constitute a set off against the special franchise tax as provided for in N.Y. Real Property Tax Law Section 626; provided, however, that the City agrees that it shall impose the same special franchise tax offset waiver restriction upon all other existing and new providers of Cable Service or cable service (as such term may be defined by other providers) in the Franchise Area expressed in writing in the franchise agreement, or the renewal of any existing franchise agreement of each respective cable provider.

## 11. REPORTS AND RECORDS

11.1 *Open Books and Records*: Upon reasonable written notice to Franchisee and consistent with Section 11.1.1 below, the City shall have the right to inspect Franchisee's books and records pertaining to Franchisee's provision of Cable Service in the Franchise Area at any time during Normal Business Hours and on a nondisruptive basis, as are reasonably necessary to ensure compliance with the terms of this Franchise, including, but not limited to, the calculation of Franchise Fees in accordance with Section 10.5 hereof. Such notice shall specifically reference the section or subsection of the Franchise which is under review, so that Franchisee may organize the necessary books and records for appropriate access by the City. Franchisee shall not be required to maintain any books and records for Franchise compliance purposes longer than six (6) years. Any records to be inspected by the City pursuant to this Article 11 shall be made available by Franchisee to the City in a mutually agreeable format and location, including, at the City's request, at a designated office of Franchisee in the City. Franchisee may identify information being disclosed to the City hereunder as "proprietary or confidential." For purposes of this Section, "proprietary or confidential" information includes, but is not limited to: information related to the Cable System design; trade secrets; Subscriber lists; marketing plans; financial information unrelated to the calculation of Franchise Fees; or other information that is reasonably determined by Franchisee to be competitively sensitive. Subject to applicable law, including but not limited to Article 6 of the New York State Public Officers Law ("FOIL"), any such information disclosed to the City that Franchisee reasonably identifies as confidential, competitively sensitive, a trade secret or proprietary (including, without limitation, financial information related to the calculation of Franchise Fees) shall be treated by the City as confidential under Section 87(2) (d) of the New York State Public Officers Law, and the City shall disclose such information only to employees, representatives, and agents thereof who have a need to know, or in order to monitor, enforce, or audit Franchisee's compliance with, the provisions hereof. If the City receives a request under FOIL or similar law for the disclosure of information that Franchisee has designated as confidential, competitively sensitive, a trade secret or proprietary, the City shall notify Franchisee of such request. If the City determines in good faith that public disclosure of the requested information is required under FOIL or pursuant to a court order, the City shall so notify Franchisee and before making disclosure shall give Franchisee a reasonable period of time to seek to obtain judicial redress to preclude disclosure. Franchisee shall not be required to provide Subscriber information in violation of Section 631 of the Communications Act, 47 U.S.C. §551. Nothing in this Article 11 is intended to impair in any way the authority of the Comptroller under Section 93(b) of the New York City Charter to perform audits, to the extent permitted by law, subject to reasonable confidentiality protections. Notwithstanding anything to the contrary set forth in this Agreement, Franchisee shall not be required to disclose information (including its books and records and



books and records of an Affiliate) that, in Franchisee's reasonable determination, does not relate to the provision of Cable Service in the Franchise Area pursuant to this Agreement.

11.2 *Franchisee's Response to Records Requests:* In the event the City provides Franchisee with a written request to inspect or review Franchisee's books and records pursuant to Section 11.1 above, Franchisee shall, within fifteen (15) days of Franchisee's receipt of such written request, provide the City with access to any information Franchisee is reasonably able to collect in response to such request and shall, within thirty (30) days from receipt of such request, make available to the City all pertinent information in response to such request, consistent with the terms of Section 11.1 above; provided however, that to the extent there is additional information which Franchisee is unable to reasonably collect in such thirty (30) day period, Franchisee shall provide the City with a written notice setting forth the nature of such additional information and the date on which Franchisee shall provide access to such additional information.

11.3 *Annual and Quarterly Reports:* Subject to the confidentiality requirements of Section 11.1 above and upon the determination of need by the Commissioner, Franchisee shall submit a written report to the Commissioner no later than forty-five (45) days after the end of each calendar year or calendar quarter, as the case may be, during the Term of this Franchise (except where otherwise expressly indicated herein), which report shall be in a form reasonably satisfactory to the Commissioner, that shall include the information described in Sections 11.3.1 through 11.3.3.

11.3.1 After July 1, 2012, Franchisee shall provide the City with an annual report regarding any MDUs for which Franchisee is using the "Additional Procedures" contained in Section 5.4.1 of this Franchise and the status of such procedures.

11.3.2 A quarterly report regarding outages and service interruptions consistent with the form attached hereto as Appendix F, as such may be revised from time to time by reasonable agreement of Franchisee and the Commissioner to appropriately reflect the public interest in reasonable documentation of Franchisee's compliance with the requirements of this Franchise with respect to the minimization of, repair of and provision of credits for, service interruptions and outages.

11.3.3 In addition to the reports to be provided as expressly set forth in this Article 11, Franchisee shall also provide the reports described in Section 10.3 and Appendix A (including but not limited to Sections 2.5.3, 3.4.3, 6.5.3 and 7.5.3 of Appendix A) and Exhibit 2 to Appendix A of this Franchise.

11.4 *Records Required:* Franchisee shall at all times maintain:

11.4.1 Records of all written complaints for a period of six (6) years after receipt by Franchisee. The term "complaint" as used herein refers to complaints about any aspect of the Cable System or Franchisee's cable operations, including, without limitation, complaints about employee courtesy. Complaint records will



not be limited to records of complaints requiring an employee service call; Records of outages for a period of six (6) years after occurrence, indicating date, duration, area, and the number of Subscribers affected, type of outage, and cause;

11.4.2 Records of service calls for repair and maintenance for a period of six (6) years after resolution by Franchisee, indicating the date and time service was required, the date of acknowledgment and date and time service was scheduled (if it was scheduled), and the date and time service was provided; and (if different) the date and time the problem was resolved;

11.4.3 Records of installation/reconnection and requests for service extension for a period of six (6) years after the request was fulfilled by Franchisee, indicating the date of request, date of acknowledgment, and the date and time service was extended;

11.4.4 Records documenting Franchisee's compliance with the provisions of Sections 5.2 through 5.4 of this Agreement;

11.4.5 Accurate maps and improvement plans which show the location, size and a general description of all facilities installed in the Public Rights-of-Way and any power supply sources, including voltages and connections (maps shall be based on post-construction inspection to verify location); and

11.5 *Additional Information:* Notwithstanding the requirements of Section 11.1 of this Agreement, upon written notice, the Commissioner may request additional information pursuant to this Franchise as may be reasonably necessary for the performance of any of the Commissioner's duties or any other City official's duty as it pertains to this Franchise. Franchisee's response to any such request may be provided to the Commissioner in oral or written form as appropriate, in Franchisee's sole discretion.

11.6 *Franchise-Wide Statistics:* Any valid reporting requirement in the Franchise may be satisfied with Franchise-wide statistics, except those related to Franchise Fees and consumer complaints, or if expressly described otherwise in this Franchise.

11.7 *File for Public Inspection:* Throughout the term of this Agreement, Franchisee shall maintain a file available for public inspection during normal business hours at its service centers, or such other business office as may be designated by Franchisee, as required by Appendix A to this Agreement.

## 12. INSURANCE AND INDEMNIFICATION

### 12.1 *Insurance:*

12.1.1 *Insurance Specifications:* At or before the Closing, Franchisee shall, at its own cost and expense, obtain (or arrange for continuation of) liability insurance policy or policies, in a form acceptable to the Commissioner, together with evidence acceptable to the Commissioner, demonstrating that the premiums for said policy or policies have been paid and evidencing that said policy or policies shall take



effect and be furnished on or before the Effective Date. Such policy or policies shall be issued by companies duly licensed to do business in the State of New York and acceptable to the Commissioner, but the Commissioner's consent may not be withheld based on the fact that the policy or policies are merged in a policy or policies maintained by an Affiliated Person or Persons adequate to cover the minimum limitations stated below. Unless the Commissioner approves otherwise, such companies must carry a rating by Best of not less than "A". Such policy or policies shall insure (i) Franchisee and (ii) the City and its officers, boards, commissions, elected officials, agents and employees (through appropriate endorsements if necessary) against each and every form of Liability of the Franchisee referred to in Sections 12.6 through 12.9 hereof in the minimum combined amount (for all Cablevision Franchisees) of a total of Fifty Million Dollars (\$50,000,000.00) for bodily injury and property damage. The foregoing minimum limitation shall not prohibit Franchisee from obtaining a liability insurance policy or policies in excess of such limitations, provided that the City, its officers, boards, commissions, elected officials, agents and employees shall be named as additional insureds to the full extent of any limitation contained in any such policy or policies obtained by Franchisee.

**12.1.2 Maintenance** The liability insurance policy or policies required by Section 12.1.1 hereof shall be maintained by Franchisee throughout the term of this Agreement and such other period of time during which Franchisee operates or is engaged in the removal of the System. Each such liability insurance policy shall contain the following endorsement: "It is hereby understood and agreed that this policy may not be cancelled nor the intention not to renew be stated until ninety (90) days after receipt by the City, by registered mail, of a written notice of such intent to cancel or not to renew." Within sixty (60) days after receipt by the City of said notice, and in no event later than thirty (30) days prior to said cancellation, Franchisee shall obtain and furnish to the Comptroller, with a copy to the Commissioner, a replacement insurance policy or policies in a form reasonably acceptable to the Commissioner.

**12.1.3 Increased Insurance Coverage:** The City may, in the event of any changed circumstances which the City reasonably believe materially increases the risks associated with Franchisee's obligations or operations under this Agreement, following the Effective Date of this Agreement, unilaterally alter the minimum limitation of the liability insurance policy or policies required in Section 12.1.1 hereof, to the extent reasonable and customary within the practices of the cable industry.

## **12.2 Operations of Franchisee:**

**12.2.1** Acceptance by the City of a certificate hereunder does not excuse Franchisee from securing a policy consistent with all provisions of this Section 12 or of any liability arising from its failure to do so.

**12.2.2** Franchisee shall be responsible for providing continuous insurance coverage in the manner, form, and limits required by this Agreement and shall be authorized to provide service pursuant to this Agreement and the Franchise only during



the effective period of all required coverage (in the event authorization to provide service hereunder ceases by reason of the non-effectiveness of any such required insurance coverage, such authorization to provide service shall be automatically restored, without any additional required action by any party, upon the effectiveness of all required insurance coverage being restored).

12.2.3 In the event of any loss, damage, injury or accident arising under this Agreement, Franchisee (once Franchisee's risk management claims group becomes aware of any of the foregoing circumstances) shall promptly notify in writing the commercial general liability insurance carrier, and, where applicable, the worker's compensation and/or other insurance carrier, of any loss, damage, injury, or accident, and any claim or suit arising under this Agreement from the operations of Franchisee or its subcontractors, promptly, but not later than 20 days after Franchisee's risk management claims group becomes aware of such event. Franchisee's notice to the commercial general liability insurance carrier must expressly specify that "this notice is being given on behalf of the City of New York as Additional Insured as well as Franchisee as Named Insured." Franchisee's notice to the insurance carrier shall contain the following information: the name of Franchisee, the number of the applicable policy, the date of the occurrence, the location (street address and borough) of the occurrence, and, to the extent known to Franchisee, the identity of the persons or things injured, damaged or lost. Additionally:

(a) At the time notice is provided to the insurance carrier(s), Franchisee shall provide copies of such notice to the Comptroller and the Commissioner. Notice to the Comptroller shall be sent to the Insurance Unit, NYC Comptroller's Office, 1 Centre Street — Room 1222, New York, New York 10007 (or replacement addresses of which the City notifies Franchisee). Notice to the Commissioner shall be sent to the address set forth in Section 18.6 hereof; and

(b) If Franchisee fails to provide any of the foregoing notices in a timely and complete manner, Franchisee shall indemnify the City for all losses, judgments, settlements and expenses, including reasonable attorneys' fees, arising from an insurer's disclaimer of coverage citing late notice by or on behalf of the City.

12.3 *Insurance Notices, Filings, Submissions:* Wherever reference is made in this Article 12 to documents to be sent to the Commissioner (e.g., notices, filings, or submissions), such documents shall be sent to the address set forth in Section 18.6 hereof.

12.4 *Disposal of Hazardous Materials:* If pursuant to this Agreement Franchisee is involved in the disposal of hazardous materials, Franchisee shall dispose of such materials only at sites where the disposal site operator maintains Pollution Legal Liability Insurance in the amount of at least Two Million Dollars (\$2,000,000) for losses arising from such disposal site.

12.5 *Other Remedies:* Insurance coverage in the minimum amounts provided for herein shall not relieve Franchisee or subcontractors of any liability under this Agreement,



nor shall it preclude the City from exercising any rights or taking such other actions as are available to it under any other provisions of this Agreement or applicable law.

12.6 *Franchisee Indemnification Obligations:* Franchisee shall indemnify, defend and hold the City, its officers, agents and employees (the "Indemnitees") harmless from any and all liabilities, suits, damages, claims and expenses (including, without limitation, reasonable attorneys' fees and disbursements) ("Damages") that may be imposed upon or asserted against any of the Indemnitees arising out of Franchisee's performance of, or its failure to perform, its obligations under this Agreement and/or its provision of Cable Services hereunder; provided, however, that the foregoing liability and indemnity obligation of Franchisee pursuant to this Section 12.6 shall not apply to any Damages to the extent arising out of any willful misconduct or gross negligence of an Indemnatee. Insofar as the facts and law relating to any Damages would preclude the City from being completely indemnified by Franchisee, the City shall be partially indemnified by Franchisee to the fullest extent provided by law, except to the extent such Damages arise out of any willful misconduct or gross negligence of any Indemnatee. This indemnification is independent of Franchisee's obligations to obtain insurance as provided under this Agreement.

12.7 *Defense of Claim, Etc:* If any claim, action or proceeding is made or brought against any of the Indemnitees by reason of any event to which reference is made in Section 12.6 hereof, then upon demand by the City, Franchisee shall either resist, defend or satisfy such claim, action or proceeding in such Indemnatee's name, by the attorneys for or approved by Franchisee's insurance carrier (if the defense of such claim, action or proceeding is provided by the insurance carrier) or by Franchisee's attorneys. The foregoing notwithstanding, in the event an Indemnatee believes additional representation is needed, such Indemnatee may engage its own attorneys to assist such Indemnatee's defense of such claim, action or proceeding, as the case may be, at its sole cost and expense. Franchisee shall not settle any claim with respect to which Franchisee is required to indemnify the Indemnitees pursuant to Section 12.6 without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed.

12.8 *No Claims Against Officers, Employees, or Agents:* Franchisee agrees not to make any claim against any officer or employee of the City or officer or employee of an agent of the City, in their individual capacity, for, or on account of, anything done or omitted in connection with this Agreement, to the extent that such officer or employee of the City or officer or employee of an agent of the City was acting within the lawful course and scope of his or her employment or agency. Nothing contained in this Agreement shall be construed to hold the City liable for any lost profits, or any consequential damages incurred by Franchisee or any Person acting or claiming by, through or under Franchisee.

12.9 *Limitation on Indemnification:* As between the City and Franchisee, the indemnification obligations of Franchisee pursuant to Section 12.6 above shall not apply to any Damages arising out of the distribution of programming over the Government/Educational Access Channels, the Institutional Network available to and used by the City, and/or the Public Access Channels, to the extent that such claim does not arise out of an act or failure to act by Franchisee other than the distribution of such programming.



### 13. TRANSFER OF FRANCHISE

13.1 *City Approval Required:* The ownership and control structure of the Franchisee as of the date of execution of this Agreement is set forth in Appendix B hereof. Subject to the provisions of this Article, Franchisee shall apply to the City for approval of any transaction in which any change is proposed with respect to ten percent (10%) or more for voting interests or twenty-five percent (25%) or more for non-voting interests of the ownership of Franchisee, the Cable System, the Cable System assets, or the Franchise by submitting FCC Form 394 or such other form as the FCC may prescribe for that purpose; provided, however, that the foregoing requirements of this Section 13.1 shall not be applicable with respect to (a) transfers of any ownership interests provided in the "Permitted Transfers" section, if any, of Appendix B, or (b) which are effectuated as a result of any transactions involving the exchange of publicly traded shares. The application shall be made at least one hundred twenty (120) calendar days prior to the contemplated effective date of the transaction. Such application shall contain complete information on the proposed transaction, including details of the legal, financial, technical, and other qualifications of the transferee. At a minimum, the following information must be included in the application:

13.1.1 all information and forms required under federal law;

13.1.2 any shareholder reports or filings with the Securities and Exchange Commission that pertain to the transaction;

13.1.3 a report detailing any changes in ownership of voting or non-voting interests of over five percent (5%);

13.1.4 other information necessary to provide an accurate understanding of the financial position of the Cable System before and after the proposed transaction;

13.1.5 information regarding any potential impact of the transaction on Subscriber rates and service; and

13.1.6 any contracts that relate to the proposed transaction as it affects the City and, upon request by the City, all documents and information that are related or referred to therein and which are necessary to understand the proposed transaction; provided, however, that if Franchisee believes that the requested information is confidential and proprietary, then Franchisee must provide the following documentation to the City: (i) specific identification of the information; (ii) a statement attesting to the reason(s) Franchisee believes the information is confidential; and (iii) a statement that the documents are available at Franchisee's designated offices for inspection by the City.

13.2 *City Action on Transfer:* To the extent not prohibited by federal law, the City may: (i) grant; (ii) grant subject to conditions directly related to concerns relevant to the transaction; (iii) deny any such transaction; or (iv) not take action, in which case the transaction shall be deemed granted, unless the requesting party and the City expressly agree in writing to an extension, pursuant to Section 617 of the Communications Act, 47 U.S.C. § 537.



13.3 *Waiver of Transfer Application Requirements:* To the extent consistent with federal law, the City may waive in writing any requirement that information be submitted as part of the transfer application, without thereby waiving any rights the City may have to request such information after the application is filed.

13.4 *Subsequent Approvals:* The City's approval of a transaction described in this Article in one instance shall not render unnecessary approval of any subsequent transaction.

13.5 *Approval Does Not Constitute Waiver:* Approval by the City of a transfer described in this Article shall not constitute a waiver or release of any of the rights of the City under this Agreement, whether arising before or after the date of the transfer.

13.6 *No Consent Required For Transfers Securing Indebtedness:* Franchisee shall not be required to file an application or obtain the consent or approval of the City for a transfer in trust, by mortgage, by other hypothecation, by assignment of any rights, title or interest of Franchisee in the Franchise or Cable System in order to secure indebtedness. However, Franchisee will notify the City within ten (10) days if at any time there is a mortgage or security interest granted on substantially all of the assets of the Cable System. The submission of Franchisee's audited financial statements prepared for Franchisee's bondholders shall constitute such notice.

13.7 *No Consent Required For Any Affiliate Transfers:* Franchisee shall not be required to pay any fee or file an application or obtain the consent or approval of the City for any transfer of an ownership or other interest in Franchisee, the Cable System, or the Cable System assets to the parent of Franchisee or to another Affiliate of Franchisee; transfer of an interest in the Franchise or the rights held by Franchisee under the Franchise to the parent of Franchisee or to another Affiliate of Franchisee; any action which is the result of a merger of the parent of Franchisee; or any action which is the result of a merger of another Affiliate of Franchisee. However, Franchisee will notify the City within thirty (30) days if at any time a transfer covered by this subsection occurs.

13.8 *Preliminary Determination Procedure:* In the event that a change in direct or indirect ownership interest or interests in Franchisee, the Franchise, the System or System assets is planned and Franchisee seeks the City's view of whether such transaction is one that would require the City's approval as described in Sections 13.1 and 13.2 above, Franchisee may submit a written request to the Commissioner (in accordance with the notice requirements of Section 18.6 hereof) describing the proposed transaction and seeking a determination as to whether such approval is required and including any arguments Franchisee wishes to make that the consent of the City is not required. Upon review of such written request, the Commissioner shall notify Franchisee in writing of the Commissioner's determination whether such approval by the City is required, provided that prior to such determination, if the Commissioner reasonably requests any information relevant to such determination, Franchisee shall provide such information.



## 14. RENEWAL OF FRANCHISE

14.1 *Governing Law:* The City and Franchisee agree that any proceedings undertaken by the City that relate to renewal or possible renewal of this Franchise shall be subject to, and shall not be inconsistent with, the Cable Law, including, without limitation, 47 U.S.C. § 546, as such may be amended from time to time.

14.2 *Informal Negotiations:* Notwithstanding anything to the contrary set forth herein, Franchisee and the City agree that at any time during the Term, while affording the public appropriate notice and opportunity to comment consistent with the Cable Law, New York State law and the City Charter, the City and Franchisee may, each acting in its discretion, agree to undertake and finalize, pursuant to 47 U.S.C. §546(h), informal negotiations regarding renewal of the Franchise granted hereunder and, if agreement is reached on the terms and conditions of such a renewal the City may grant such a renewal, consistent with the applicable procedures and requirements of the Cable Law, New York State law and the City Charter.

14.3 *Non-Renewal/Termination:* In the event that (i) the City (acting in accordance with 47 U.S.C. § 546 so long as and to the extent such provision is applicable), at the conclusion of the renewal process provided by law, including any legal challenges and appeals, denies a renewal of the Franchise at the scheduled expiration date of the Term; or (ii) this Agreement is terminated for any other lawful reason prior to the scheduled expiration of the Term, then the Term of the Franchise shall expire and, except as provided for by applicable law, all rights of Franchisee under the Franchise shall cease, and the rights of the City and Franchisee to the Cable System, or any part thereof, shall be determined as provided in Sections 15.8.3, 15.8.3.1, 15.8.3.1.1, and/or 15.8.3.1.2 hereof, as applicable; provided, however, that the termination of this Agreement and the Franchise granted hereunder shall not, for any reason, operate as a waiver or release of any obligation of Franchisee or any other Person, as applicable, for any liability existing as of such date (i) pursuant to Sections 12.6 and 12.7 hereof, which arose or arises out of any act or failure to act required hereunder prior to the termination; and/or (ii) pursuant to Articles 10 or 11 hereof. Franchisee's obligation to maintain in full force and effect the Performance Bond and Security Fund described in Article 15 hereof, and the coverage under the liability insurance policies required under and in accordance with Article 12 hereof shall survive any termination of this Agreement for the full period such maintenance is required as described in the applicable provisions of this Agreement, and in addition shall survive for the full period of any continuation by Franchisee of its provision of Cable Service within the Franchise Area after the Term of this Agreement, as referenced in Section 18.19 of this Agreement.

14.4 *Consistent Terms:* Franchisee and the City consider the terms set forth in this Article 14 to be consistent with the express provisions of 47 U.S.C. § 546 and the Cable Law as they exist as of the Effective Date.

## 15. DEFAULT AND REMEDIES

15.1 *Defaults.* In the event of any breach, default, failure or other noncompliance by Franchisee in the performance of any obligation of Franchisee under this Agreement (each such breach, default, failure or other noncompliance being referred to herein as



a "Default"), which Default is not cured within the specific cure period provided for in this Agreement (or if no specific cure period is provided for in this Agreement then within the cure period described in Section 15.3 below), then the City may:

15.1.1 make a demand upon the Performance Bond pursuant to the provisions of Section 15.9 herein;

15.1.2 draw down on the Letter of Credit pursuant to the provisions of Section 15.10 herein;

15.1.3 cause a withdrawal from the cash Security Fund, pursuant to the provisions of Section 15.11 herein;

15.1.4 pursue any rights the City may have under the Guaranty;

15.1.5 seek and/or pursue money damages from Franchisee as compensation for such Default (including, as applicable, liquidated damages as contemplated in Section 15.13 hereof);

15.1.6 seek to restrain by injunction the continuation of the Default; and/or

15.1.7 pursue any other remedy permitted by law, or in equity, or as set forth in this Agreement; provided, however, that the City shall only have the right to terminate this Agreement upon the occurrence of a Revocation Default (defined hereinafter).

15.2 *Notice of Default:* If at any time the City believes that Franchisee has committed any Default, the City shall notify Franchisee's designated Franchise manager, and the Franchisee representatives identified in Section 18.6 hereof, of such alleged Default. If, thereafter, the City determines that Franchisee is not in Default, the City shall promptly provide Franchisee with written notice of such determination. However, if the City determines that such notice has failed to result in a resolution of the matter, the City shall then notify Franchisee in writing of the alleged Default and identifying the specific provision of the Franchise on which the alleged Default is based (for purposes of this Article, the "Notice of Default").

15.3 *Franchisee's Right to Cure or Respond:* Except as set forth in Section 15.3.1 below, Franchisee shall have thirty (30) days from receipt of the Notice of Default to: (i) respond to the City, if Franchisee contests (in whole or in part) the allegation of Default; or (ii) cure such alleged Default. Upon cure of any alleged Default, the City shall provide written confirmation that such cure has, to the knowledge of the Commissioner or designated representative thereof, been effected.

15.3.1 With respect to the following Franchise obligations, Franchisee shall have ten (10) days from the receipt of Notice of Default to (i) respond to the City, if Franchisee contests (in whole or in part) the allegation of Default; or (ii) cure such alleged Default: (a) payment of Franchise Fees, Annual G/E Grants, or Technology,



Educational & Municipal Facility Grants; and (b) maintenance of Security pursuant to Sections 15.9 and 15.10.

15.4 *Extended Time to Complete Cure:* Notwithstanding anything in the preceding to the contrary, no Default shall exist if a breach or default is curable, and a cure period is provided therefor in this Article 15 or otherwise, but work to be performed, acts to be done, or conditions to be removed to effect such cure cannot, by their nature, reasonably be performed, done or removed within the cure period provided, so long as Franchisee shall have commenced curing the same within the specified cure period and shall diligently and continuously prosecute the same promptly to completion.

15.5 *Miscellaneous Matters Regarding Default, Cure and Remedies:* The rights and remedies described in Section 15.1 hereof shall not be exclusive, but each and every right and remedy specifically provided or otherwise existing or given may be exercised from time to time and as often and in such order as may be deemed appropriate by the City, except as provided herein. The exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy, nor shall any delay or omission in taking any action or exercising any remedies with respect to any Default be construed to be a waiver of or acquiescence to any Default. The exercise of any such right or remedy by the City shall not release Franchisee from its obligations or any liability under this Agreement; provided, however, that nothing in this Section 15.5 or in this Agreement is intended to authorize or shall result in the double recovery of damages by the City.

15.6 *Revocation Defaults; Definition of Revocation Default:* A Revocation Default shall mean any of the following occurrences or events:

15.6.1 any failure by Franchisee to maintain in effect the Performance Bond described in Section 15.9 hereof in accordance with the provisions of said section, which failure continues for ten (10) business days after notice;

15.6.2 any failure by Franchisee to maintain in effect the Letter of Credit described in Section 15.10 hereof and/or the cash Security Fund described in Section 15.11 hereof in accordance with the provisions of said sections, which failure continues for ten (10) business days after notice;

15.6.3 if Franchisee intentionally makes a material false entry, or repeated false entries that are material in the aggregate, in the books of account of Franchisee applicable to this Agreement, or a material false statement (or repeated false statements that are material in the aggregate) in reports or other filings submitted to the City (materiality for purposes of this clause being defined as material with respect to accurately documenting Franchisee's compliance with its obligations under this Agreement);

15.6.4 if Franchisee fails to maintain insurance coverage or otherwise materially breaches Article 12 hereof and such failure continues for ten (10) business days after notice from the City to Franchisee;



15.6.5 if Franchisee engages in a course of conduct intentionally designed to practice fraud or deceit upon the City;

15.6.6 if Franchisee intentionally engages or has intentionally engaged in any material misrepresentation with respect to any representation or warranty contained herein;

15.6.7 if there is any transfer of the Franchise other than in accordance with Article 13 hereof;

15.6.8 the conviction, guilty plea or plea of nolo contendere of Franchisee, any Controlling Person, any director or officer of Franchisee, or any employee or agent of Franchisee or of any Controlling Person acting under the express direction or with the actual consent of any of the foregoing, of any offense, including, without limitation, bribery or fraud, arising out of or in connection with this Agreement, the award of the Franchise granted pursuant to this Agreement; provided, however, that such an event shall constitute a Revocation Default with respect to any of the foregoing with respect to a malfeasant director, officer, employee or agent of Franchisee or of any Controlling Person only if Franchisee or the applicable Controlling Person refuses to disassociate itself from, or terminate the employment of, said director, officer, employee or agent;

15.6.9 the conviction or guilty plea of any City officer, employee, or agent of the offense of bribery or fraud with respect to this Agreement which arises out of any act of Franchisee or any Controlling Person, or of any agent or employee thereof acting under the express direction or actual consent of the foregoing;

15.6.10 any abandonment of service in default of the obligations described in Section 15.14 hereof; and

15.6.11 any persistent and repeated pattern of material Defaults, even if individual Defaults constructing such a persistent and repeated pattern are subsequently cured after their occurrence or remediated by recourse to security provided to the City under Sections 15.9 through 15.11 hereof or by other means; provided, however, that this provision shall not apply to alleged Defaults subject to good faith disputes.

15.7 *Remedies of the City for Revocation Defaults:* In the event of a Revocation Default, the City may (in addition to any other remedy which the City may have under Section 15.1 hereof) at its option, give to Franchisee a written notice ("Notice of Revocation"), in accordance with Section 15.8 hereof, stating that this Agreement and the Franchise granted hereunder shall be revoked on the date specified in such notice (which date shall not be less than ninety (90) days from the giving of the notice), and this Agreement and the Franchise granted hereunder shall terminate on the date set forth in such notice as if such date were the date provided in this Agreement for the scheduled expiration of this Agreement and the Franchise



granted herein. Notwithstanding the preceding however, during the period between the Notice of Revocation provided pursuant to this Section 15.7 and thirty days prior to the date of revocation set forth in such notice, Franchisee may submit to the City any material it wishes to document that no Revocation Default has occurred or that revocation as a remedy for such Revocation Default would not be in the best interests of the City. If the City after reviewing such material determines that a Revocation Default has not occurred, or determines in its discretion that termination as a remedy for such Revocation Default would not be in the best interests of the City, then the City shall notify Franchisee of its withdrawal of the Notice of Revocation which Notice shall thereby no longer be effective.

15.8 *Revocation/Termination Procedures:* In the event the City has not received a satisfactory response from Franchisee to the Notice of Revocation, it may then seek revocation of the Franchise at a hearing. The City shall cause to be served upon Franchisee, at least thirty (30) business days prior to such hearing, a written notice specifying the time and place of such hearing which shall not be earlier than as provided for in Section 15.7 and stating its intent to revoke the Franchise and the grounds therefor.

15.8.1 *Revocation Hearing:* At the designated hearing, Franchisee shall be provided a fair opportunity for full participation, including the rights to be represented by legal counsel, to introduce relevant evidence, to require the production of evidence, to compel the relevant testimony of the officials, agents, employees or consultants of the City, to compel the testimony of other persons as permitted by law, and to question and/or cross-examine witnesses. A complete verbatim record and transcript shall be made of such hearing.

15.8.2 *Revocation Determination:* Following the hearing, Franchisee shall be provided up to thirty (30) days to submit its proposed findings and conclusions to the City in writing, and thereafter the City shall determine (i) whether an event of Revocation Default has occurred under this Franchise; (ii) whether such event of Revocation Default is excusable; (iii) whether such event of Revocation Default has been cured or will be cured by Franchisee; and (iv) whether it is in the best interests of the City to require termination. The City shall also determine whether it will revoke the Franchise based on the information presented, or, where applicable, grant additional time to Franchisee to effect any cure. If the City determines that it will revoke the Franchise, the City shall promptly provide Franchisee with a written determination setting forth the City's reasoning for such revocation. Franchisee may appeal such written determination of the City to an appropriate court, which shall have the power to review the decision of the City de novo. Franchisee shall be entitled to such relief as the court finds appropriate. Such appeal must be taken within sixty (60) days of Franchisee's receipt of the written determination of the City.

15.8.3 *Rights Upon Revocation or Termination:* In the event of a revocation of the Franchise as described in this Section 15.8 (with the result being termination of Franchisee's franchise rights under this Agreement) or any other termination of this Agreement and the Franchise without renewal (provided such has occurred in a manner consistent with federal law), then the removal,



acquisition and/or transfer provisions of Section 15.8.3.1 below shall become applicable and, in addition, the City may: (i) direct Franchisee, subject to NY PSC authority, to operate the System on behalf of the City pursuant to the provisions of this Agreement and such additional terms and conditions as are equitable to the City and Franchisee, for a period of up to twelve (12) months; (ii) authorize any other Person to operate the System on behalf of the City; provided, however, that, in such event, Franchisee shall have received such compensation as is contemplated pursuant to the provisions of this Section 15; or (iii) order Franchisee to cease all construction and operational activities in a prompt and workmanlike manner.

*15.8.3.1 City's Right To Order Removal or To Acquire or Effect a Transfer of the System.*

15.8.3.1.1 The City and Franchisee intend that the System be permanent. However, in the event of unforeseen circumstances that may arise resulting in a termination, without any right of renewal, of the Franchise under the circumstances described in clause (i) or clause (ii) of Section 14.3, the City, in addition to its rights under Section 15.8.3 above, may, in its sole discretion, but shall not be obligated to, direct Franchisee to remove, at Franchisee's sole cost and expense, all or any portion of the System from all Public Rights-of-Way and other public property within the City, subject to the following: (i) this provision shall not apply to underground cable, which cannot be removed; (ii) in removing the System, or part thereof, Franchisee shall refill and compact, at its own expense, any excavation that shall be made by it and shall leave all Public Rights-of-Way and other public property in as good condition as that prevailing prior to Franchisee's removal of the System and without affecting, altering or disturbing in any way any electric, telephone or other utility cables, wires or attachments (except to the extent such affecting, altering or disturbing is permitted by an agreement between Franchisee and the applicable owner of the cable, wires or attachments); (iii) the City shall have the right to inspect and approve the condition of such Public Rights-of-Way and other public property after removal; (iv) the Security Fund, liability insurance and indemnity provisions of this Agreement shall remain in full force and effect during the entire period of removal and associated repair of all Public Rights-of-Way and other public property; and (v) removal shall be commenced within thirty (30) days of the removal order by the City unless such commencement is delayed because the City does not grant Franchisee necessary permits, licenses, approvals or other authorizations required to begin such work within thirty (30) days, in which case Franchisee shall commence such removal within thirty (30) days following the granting of such required permit(s), license(s), approval(s) or authorization(s), and shall be completed within twelve (12) months thereafter including all associated repair of public property; provided, however, that, in the event the City causes any delays in such removal and associated repair of all Public Rights-of-Way, then the period for completion of such removal and repair of all Public Rights-of-Way shall be extended by the length of time of such delay



(e.g., without limitation, after the commencement of the removal, the City requires Franchisee to obtain a permit to perform a portion of such removal work and the City takes 2 months to grant such permit, such 12-month period shall be extended by 2 months), and provided, further, that in the event that it is not commercially reasonable for Franchisee to perform such removal and associated repair of all Public Rights-of-Way within such 12-month period, then Franchisee shall be granted a commercially reasonable time period in which to perform such removal and associated repair of all Public Rights-of-Way.

If, in the reasonable judgment of the Commissioner, which judgment shall be subject to appeal by Franchisee to a court of competent jurisdiction and shall not become final until such a court issues a final, non-appealable judgment, Franchisee fails to substantially complete such removal, including all associated repair of public property within the period set forth above and such failure is the result of actions taken, or the failure to act, by Franchisee and Franchisee is not making good faith efforts to complete such work, then, to the extent not inconsistent with applicable law, the City shall have the right to: (a) declare that (subject to the rights of third parties) all rights, title and interest to the System belong to the City with all rights of ownership, including, but not limited to, the right to operate the System or to effect a transfer of the System to another Person for operation; (b) authorize removal of the System, at Franchisee's cost, by another Person; and (c) to the extent not inconsistent with applicable law, any portion of the System not designated by the City for removal shall belong to and become the property of the City without compensation to Franchisee; and Franchisee shall execute and deliver such documents, as the Commissioner shall request, in form and substance acceptable to the Commissioner, to evidence such ownership by the City. Franchisee shall not be required to assign to the transferee proprietary information in the System, but shall provide, to the maximum extent feasible and practicable, a perpetual (or at least until the later of the end of the term of the Franchise or operation of the System) license to use such proprietary information, on terms reasonably acceptable to Franchisee (including, without limitation, terms ensuring the confidentiality and/or proprietary nature of such information); provided, however, that no such license shall be required with respect to proprietary information that was uniquely developed for use in Franchisee's and/or its Affiliate's cable systems and is not so integral to the operation of the System that the System cannot be operated on a commercially reasonable basis without such information, and provided further that the transferee shall be obligated to use all reasonable efforts to develop or acquire information to substitute for such proprietary information, and upon the development or acquisition, and use, of such substitute information, such license shall terminate.

#### 15.8.3.1.2 *Acquisition or Transfer.*



(a) *Generally*: Subject to subsection 15.8.3.1.2(b) below, upon any termination (without renewal) of the Franchise and as an alternative to ordering removal of the System, the City shall have the right to, and may, in its sole discretion, acquire or effect a transfer to a third party acceptable to the City of all or any part of the System and all components thereof necessary to maintain and operate the System pursuant to the terms of this Agreement. Franchisee shall not be required to assign to the transferee proprietary information in the System, but shall provide, to the maximum extent feasible and practicable, a perpetual (or at least until the later of the end of the term of the Franchise or operation of the System) license to use such proprietary information, on terms reasonably acceptable to Franchisee (including, without limitation, terms ensuring the confidentiality and/or proprietary nature of such information); provided, however, that no such license shall be required with respect to proprietary information that was uniquely developed for use in Franchisee's and/or Affiliate's cable systems and is not so integral to the operation of the System that the System cannot be operated on a commercially reasonable basis without such information, and provided further that the transferee shall be obligated to use all reasonable efforts to develop or acquire information to substitute for such proprietary information, and upon the development or acquisition, and use, of such substitute information, such license shall terminate.

(b) *Price*: The price to be paid to Franchisee upon an acquisition or transfer by the City to the City or a third party acceptable to the City shall depend upon the nature of the termination. If the Franchise terminates at the scheduled end of the Term and renewal of the Franchise is denied, then the price shall be fair market value, determined on the basis of the System valued as a going concern but with no value allocated to the Franchise itself (i.e., the fair market value of the System valued as a going concern, with a deduction for the value allocable to the franchise itself) but the price shall in no event exceed the price the City is permitted to pay under the City Charter, unless otherwise preempted by applicable law. If the termination is due to the revocation of the Franchise after a Revocation Default, then the price shall be an equitable price, reasonably determined (provided that such determination shall be subject to challenge by Franchisee in a court of competent jurisdiction) with due regard to the injury to the City and its residents and with no value allocable to the Franchise itself, which price shall in no event exceed the price the City is permitted to pay under the City Charter, unless otherwise preempted by applicable law.



(c) *Valuation Date*: The date of valuation for purposes of any price determination pursuant to subsection (b) above shall be as of a date no later than the day before the City preliminarily elects to acquire or to effect a transfer of the System; provided, however, that the City shall not choose a date with the intent of unreasonably deflating the price. For the purpose of determining such valuation, the City shall select a qualified appraiser experienced in the valuation of cable television systems (provided that Franchisee shall be provided a meaningful opportunity to challenge the qualifications of such appraiser) to compute the purchase price in accordance with the aforementioned standards; provided, however, that any determination by such appraiser shall be subject to challenge by Franchisee in a court of competent jurisdiction and such determination shall not be deemed final unless and until a final non-appealable decision is rendered by such court. If the termination is due to an abandonment of the System by Franchisee, then there shall be no price due to Franchisee, except to any extent to which the City is expressly required by law to make a payment to Franchisee.

(d) *Franchisee's Obligations*: In the event of any acquisition or transfer pursuant to this Section 15.8.3.1.2, the following subsections (i), (ii) and (iii) shall be applicable:

- (i) Franchisee shall cooperate in a commercially reasonable manner with the City or any third party in maintaining continuous and uninterrupted distribution of Cable Services over the System;
- (ii) Franchisee shall, as promptly as practicable, execute all appropriate documents to transfer to the City or third party title to the System, all components thereof necessary to operate and maintain the System pursuant to the terms and conditions of this Agreement, as well as all contracts, leases, licenses, permits, rights-of-way, and any other rights, contracts or understandings necessary to maintain the System and the distribution of Cable Services over the System; provided, however, that such transfers shall be made subject to the rights, under Article 9 of the Uniform Commercial Code as in effect in the State of New York and, to the extent that any collateral consists of real property, under the New York Real Property Law, of banking or lending institutions which are secured



creditors or mortgagees of Franchisee at the time of such transfers; and provided that, with respect to such creditors or mortgagees, the City shall have no obligation following said transfers to pay, pledge, or otherwise commit in any way any general or any other revenues or funds of the City, other than the net operating revenues received by the City from its operation of the System, in order to repay any amounts outstanding on any debts secured by the System which remain owing to such creditors or mortgagees; and provided, finally, that the total of such payments by the City to such creditors and mortgagees, from the net operating revenues received by the City from its operation of the System, shall in no event exceed the lesser of: (x) the fair market value of the System on the date of the transfer of title to the City or (y) the outstanding debt owed to such creditors and mortgagees on said date. Nothing in this subsection (d) shall be construed to limit the rights of any such banking or lending institutions to exercise its or their rights as secured creditors or mortgagees at any time prior to the payment of all amounts due pursuant to the applicable debt instruments; and

- (iii) Franchisee shall promptly supply the Commissioner with all necessary records to reflect the City's or third party's ownership of the System and to operate and maintain the System, including, without limitation, all Subscriber records and plant and equipment layout documents.

(e) *Other Provisions:* The City and Franchisee shall negotiate in good faith all other terms and conditions of any such acquisition or transfer, except that, in the event of any acquisition of the System by the City: (i) the City shall not be required to assume any of the obligations of any collective bargaining agreements or any other employment contracts held by Franchisee or any other obligations of Franchisee or its officers, employees, or agents, including, without limitation, any pension or other retirement, or any insurance obligations; and (ii) the City may lease, sell, operate, or otherwise dispose of all or any part of the System in any manner.

#### 15.9 *Performance Bond:*



15.9.1 *Establishment*: Franchisee shall arrange for, and shall maintain throughout the term of this Agreement, a performance bond, for the benefit of the City, in the form attached hereto as Appendix G and from an institution satisfactory to the City, in an amount as provided in Section 15.9.2 below (the "Performance Bond"). The "City of New York acting by and through the Department of Information Technology and Telecommunications" shall serve as the sole obligee under the Performance Bond. The attorney-in-fact who signs the Performance Bond must file with the bond a certified copy of his/her power of attorney to sign the bond. The Performance Bond shall serve as security (together with the other elements of security provided for under this Agreement) for Franchisee's timely performance of its obligations under this Agreement.

15.9.2 *Amount and Term*: The Performance Bond shall have a face amount of One Million Dollars (\$1,000,000). The Performance Bond provided hereunder shall provide that it shall remain in effect during the term of this Agreement and for one year thereafter unless within such one year period the Commissioner notifies Franchisee that the Performance Bond shall remain in full force and effect because of the pendency of any litigation or the assertion of any claim which has not been brought to final judgment and for which the Performance Bond provides security.

15.9.3 *Claim Against the Performance Bond*: The City may make a claim against the Performance Bond in such amounts as are necessary to satisfy (to the degree possible) the obligations referenced in Section 15.9.1 (and to reimburse the City for costs, losses or damages incurred as the result of any failure(s) to meet such obligations). The City may not seek recourse against the Performance Bond for any costs, losses or damages for which the City has previously been compensated, (a) through a drawdown against the Performance Bond, (b) by recourse to the Letter of Credit, (c) by a withdrawal from the cash Security Fund, or (d) otherwise by Franchisee or, to the extent of the Guarantee, Guarantor.

#### 15.10 *Letter of Credit*:

15.10.1 *Establishment*: Franchisee shall arrange for, and shall maintain throughout the term of this Agreement and for one year thereafter, a letter of credit, for the benefit of the City, in a form and issued by a bank satisfactory to the City, in an amount as provided in Section 15.10.2 below (the "Letter of Credit"). The Letter of Credit shall serve as security (together with the other elements of security provided for under this Agreement) for Franchisee's timely performance of its obligations under this Agreement. The "City of New York acting by and through the Department of Information Technology and Telecommunications" shall be named as the beneficiary. The original Letter of Credit shall be deposited with the City. The Letter of Credit shall contain the following endorsement or with language with similar effect: "It is hereby understood and agreed that this letter of credit may not be canceled or not renewed by the issuer/surety until at least ninety (90) days after receipt by the New York City Department of Information Technology and Telecommunications of a written notice stating such intention to cancel or not to renew."



15.10.2. *Amount:* The Letter of Credit shall be in the amount of Four Million One Hundred Thirty Thousand Dollars (\$4,130,000.00).

15.10.3. *Drawdown Against the Letter of Credit:*

15.10.3.1 The City may draw down against the Letter of Credit such amounts as are necessary to satisfy (to the degree possible) Franchisee's obligations under this Agreement not otherwise met in accordance therewith (and to reimburse the City for costs, losses or damages incurred as the result of any failure(s) to meet such obligations). The City may not seek recourse against the Letter of Credit for any costs, losses or damages for which the City has previously been compensated (a) through a drawdown against the Letter of Credit, (b) by recourse to the Performance Bond, (c) by a withdrawal from the cash Security Fund or (d) otherwise by Franchisee or, to the extent of the Guaranty, Guarantor.

15.10.3.2 In addition to its right to draw down on the Letter of Credit for any of the reasons set forth in Section 15.10.3.1 hereof, the City may draw down in full on the Letter of Credit at any time such Letter of Credit has less than thirty (30) days to run before it is scheduled to expire and no replacement or renewal Letter of Credit has been given in its place. In the event of a drawdown for such reason, the City will hold the proceeds as cash security (paying to itself any interest earned) in lieu of a Letter of Credit (with the City having the right to make withdrawals for the same purposes as drawdowns are permitted on the Letter of Credit) until a replacement Letter of Credit is put in place, at which time such drawdown proceeds will be returned to Franchisee less any proper withdrawals and any reasonable transaction expenses. In the event of a drawdown on the Letter of Credit as contemplated by this Section 15.10.3.2, and until such time as a replacement Letter of Credit is obtained in accordance herewith, the replenishment obligations of Franchisee with respect to the moneys held by the City following such drawdown as cash security shall correspond to the replenishment obligations (and rights) of Franchisee applicable to the cash Security Fund under Section 15.11.

15.10.3.3 Within two business days after any drawdown against the Letter of Credit, the City shall notify Franchisee of the date and amount thereof.

15.10.4 *Replenishment:* Until the expiration of one year after the Term, within 30 days after receipt of notice (the "Replenishment Period") from the City that at least One Hundred Thousand Dollars (\$100,000) (cumulatively or in a single instance) has been drawn down against the Letter of Credit, Franchisee shall obtain a replacement or additional Letter of Credit such that the total amount available under the letter(s) of credit obtained shall be restored to the amount required in Section 15.10.2.

15.11 *Cash Security Fund:*



15.11.1 *Establishment and Amount:* Franchisee shall deposit with DoITT as a condition to the Closing a certified check, bank check or wire transfer, payable to the "City of New York," in the total amount of Two Hundred Fifty Thousand Dollars (\$250,000), to be held by the City as security (together with the other elements of security provided for under this Agreement) for performance of Franchisee's obligations under this Agreement (the "Security Fund").

15.11.2 *Withdrawals From or Claims Under the Security Fund:* The City may make withdrawals from the Security Fund of such amounts as are necessary to satisfy (to the degree possible) Franchisee's obligations under this Agreement not otherwise met in accordance therewith (and to reimburse the City for costs, losses or damages incurred as the result of any failure(s) to meet such obligations). The City may not seek recourse against the Security Fund for any costs, losses or damages for which the City has previously been compensated (a) through a withdrawal from the Security Fund, (b) by recourse to the Performance Bond provided for in this Agreement; (c) by a drawdown against the Letter of Credit provided for in this Agreement or (d) otherwise by Franchisee or Guarantor. Within two business days after any withdrawal from the Security Fund, the City shall notify Franchisee of the date and amount thereof.

15.11.3 *Replenishment:* Until the expiration of one year after the end of the Term, within 30 days after receipt of notice (the "Replenishment Period") from the City that any amount has been withdrawn from the Security Fund as provided in Section 15.11.2, Franchisee shall restore to the Security Fund the amount thus withdrawn.

15.11.4 *Return of Security Fund:* Within thirty (30) days of the end of the Term, the City shall pay over to Franchisee any amounts remaining in the Security Fund.

15.12 *Not a Limit on Liability:* Neither Franchisee's obligations under this Agreement nor Franchisee's liability for non-performance of any such obligations are limited in nature or amount by the acceptance or availability of the Performance Bond provided pursuant to Section 15.9, the Letter of Credit provided pursuant to Section 15.10 or the cash Security Fund provided by Section 15.11, except to the extent the City is actually compensated through its resort to such security.

15.13 *Liquidated Damages:* Franchisee shall be liable to the City for failure to substantially comply with a material requirement of Appendix A, Part 1, to this Agreement which occurs prior to June 30, 2012 in the amount One Thousand Five Hundred Dollars (\$1,500) per day for each day that such failure occurs or continues unless, within fifteen (15) business days after receipt of notice by Franchisee from the Commissioner, or such longer period as the Commissioner shall specify, Franchisee has cured the alleged failure, presented facts and arguments in refutation or excuse of each such alleged failure that reasonably satisfies the Commissioner, or provided a cure plan and schedule that reasonably satisfies the Commissioner. At the option of the City, such amounts may be withdrawn from the Security Fund and paid to



the City or shall be paid in such other manner as may be reasonably determined by the City. Franchisee agrees that the foregoing amounts are liquidated damages, not a penalty or forfeiture, and are within one or more exclusions to the term "franchise fee" provided by 47 U.S.C. § 542(g)(2)(A)-(D). Further, the payment of such liquidated damages shall not be deemed to be: (x) "payments-in-kind" or involuntary payments chargeable against the compensation to be paid to the City by Franchisee pursuant to Article 10 hereof, or (y) part of the compensation to be paid to the City pursuant to Article 10 hereof. Nothing contained in this Section shall be construed to permit duplicative recovery from or payment by Franchisee or the Guarantor.

15.14 *Abandonment of Cable Service*: Franchisee shall not abandon provision of any Cable Service or portion thereof in the City without the City's prior written consent as provided in the Cable Law.

## 16. CUSTOMER PROTECTION STANDARDS

16.1 *Generally*: Franchisee shall comply with (1) the consumer protection standards set forth in Parts 890 and 896 of the NY PSC rules and regulations (2) through July 1, 2012, the provisions of Appendix A, Part 1, and (3) after July 1, 2012, the provisions of Appendix A, Part 2 attached to and made a part of this Agreement.

16.2 *Privacy Protection*: Franchisee shall comply with the provisions of 47 U.S.C. § 551 and any other applicable law, including any local standards to the extent not inconsistent with the terms of this Franchise established in accordance with applicable law, with respect to the protection of the privacy of Subscribers.

16.3 *Parental Control*: Franchisee shall make available to any Subscriber, if not already incorporated in standard equipment that is offered to all Subscribers, a device that offers as an option the ability to limit access to programming to Persons who provide a personal identification number or other means provided by Franchisee only to a Subscriber, or other similar means of allowing parents to control children's access to programming in the Subscriber household; provided, however, that it is not the intention of the parties that this Agreement be construed as placing any responsibility or liability on Franchisee for the exercise of or failure to exercise such parental controls as are offered, and Franchisee shall incur no liability for any Subscriber's or viewer's exercise or failure to exercise such controls as are offered.

16.4 *Information to City*: Franchisee shall provide Subscriber information requested by the City for the purpose of enforcement of this Franchise, to the extent the provision of such information does not violate applicable law (including, without limitation, 47 U.S.C. § 551).

16.5 *Survey*: During the six months prior to each of the fourth and eighth anniversaries of the Effective Date, Franchisee shall, if it has been requested in writing to do so by DoITT, conduct, at its own expense, an ascertainment of the community's views regarding the nature and adequacy of Franchisee's Cable Services, including the adequacy of the broad categories of programming being provided. The ascertainment shall consist of a telephone survey of a statistically valid sample of Franchisee's cable customers in the City. The survey questionnaire shall be developed with the participation of Franchisee and DoITT. A written



summary of the findings, prepared by the independent entity and including a description of the methodology used, shall be provided to the City.

## 17. EMPLOYMENT AND PURCHASING

17.1 *Right to Bargain Collectively:* Franchisee shall recognize the right of its employees to bargain collectively through representatives of their own choosing in accordance with applicable law. Franchisee shall recognize and deal with the representatives duly designated or selected by the majority of its employees for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, or any other terms, conditions, or privileges of employment as required by law. Franchisee shall not dominate, interfere with, participate in the management or control of, or give financial support to any union or association of its employees.

17.2 *No Discrimination:* Franchisee shall not: (i) refuse to hire, train, or employ; (ii) bar or discharge from employment; or (iii) discriminate against any individual in compensation, hours of employment, or any other term, condition, or privilege of employment, including, without limitation, promotion, upgrading, demotion, downgrading, transfer, layoff, and termination, on the basis of race, creed, color, national origin, sex, age, handicap, marital status, affectional preference or sexual orientation in accordance with applicable law. Franchisee agrees to comply in all respects with all applicable federal, state and local employment discrimination laws and requirements during the term of this Agreement.

17.3 *Local Employment Plan:* Within thirty (30) days of the Effective Date hereof, Franchisee shall, at its own cost and expense, develop, maintain, implement and disclose to the City (subject to appropriate and lawful confidentiality restrictions), a plan, consistent with Franchisee's collective bargaining agreements, for the recruitment, education, training, and employment of residents of the City for the opportunities to be created by the deployment and provision of service contemplated in this Agreement.

17.4 *City Vendors:* To the extent feasible and consistent with applicable law, and with due regard to price and quality considerations, Franchisee shall utilize vendors located in the City in connection with the deployment and provision of service contemplated by this Agreement.

17.5 *Local Law Requirements:* Franchisee agrees to comply in all respects with the provisions of the Mayor's Executive Order No. 50 (April 25, 1980) (codified at Title 10 Sections 1-14 of the Rules of the City of New York) and City Administrative Code 6-108.1 (1984) and all rules and regulations promulgated thereunder) (collectively, the "EEO Requirements"), as such EEO Requirements may be amended, modified or succeeded throughout the Term of this Agreement. Notwithstanding the fact that the EEO Requirements do not apply on their face to Franchisee in its capacity as a franchisee, Franchisee shall comply in all respects with the provisions of such EEO Requirements and successor and replacement laws, orders and regulations adopted following the date of this Agreement. As required by said Executive Order No. 50, the provisions of Sections 50.30 and 50.31 of the Final Rule implementing said Order are incorporated herein by this reference.



## 18. MISCELLANEOUS PROVISIONS

18.1 *Competition:* The parties agree that this Agreement, when compared to the terms of the City's cable television franchise agreements in existence as of the Closing, contains economic and regulatory burdens which, when taken as a whole, are not greater or lesser than those placed upon other cable operators operating within the Franchise Area.

18.2 *Actions of Parties:* Any action to be taken by the City and/or the Commissioner pursuant to this Agreement shall be taken in accordance with the applicable provisions of the City Charter, as said Charter may be amended or modified throughout the Term of this Agreement. In any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld, delayed or conditioned, unless expressly agreed otherwise.

18.3 *Binding Acceptance:* This Agreement shall bind and benefit the parties hereto and their respective heirs, beneficiaries, administrators, executors, receivers, trustees, successors and assigns, and the promises and obligations herein shall survive the expiration date hereof.

18.4 *Preemption:* In the event that federal or state law, rules, or regulations preempt a provision or limit the enforceability of a provision of this Agreement, the provision shall be read to be preempted to the extent, and for the time, but only to the extent and for the time, required by law. In the event such federal or state law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect, and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of the City.

18.5 *Force Majeure:* Subject to the procedures set forth in the last sentence of this Section 18.5, Franchisee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by a Force majeure; provided, however, that in the event that any delay in performance resulting from such a Force Majeure affects only part of Franchisee's capability to perform, Franchisee shall perform to the extent it is able to do so and shall take all steps, reasonably within its ability, to minimize the length and effect of such Force Majeure delay. Franchisee shall notify the Commissioner in writing of the occurrence of an event of Force Majeure, or a series of related events constituting an event of Force Majeure, which resulted in or is resulting in a delay in performance, such notice to be provided within twenty (20) business days of the event or series of events, or if notification within such period is not practicable under the circumstances, as soon as practicable.

18.6 *Notices:* Every notice, order, petition, document, or other direction or communication to be served upon the City or Franchisee shall be in writing and shall be sufficiently given if sent by registered or certified mail, return receipt requested, or by a nationally recognized overnight delivery service, to the following addresses (unless expressly stated otherwise in this Agreement):







by all necessary action on the part of Franchisee. This Agreement and all other agreements entered into in connection with the transactions contemplated hereby have been duly executed and delivered by Franchisee and constitute (or upon execution and delivery will constitute) the valid and binding obligations of Franchisee.

*18.7.3 Ownership And Control As Of Date Of Execution:* The ownership and control structure of the Franchisee as of the date of execution of this Agreement is accurately set forth in Appendix B hereof.

*18.7.4 Compliance with Law:* Franchisee is in compliance with all laws, ordinances, decrees and governmental rules and regulations applicable to the provision of the services contemplated herein and has obtained or will obtain prior to the provision of service to the public all government licenses, permits, and authorizations necessary for the provision of the service, except approval by the NY PSC.

*18.7.5 Compliance with City Contracts:* Franchisee has not received notice from the City of any default or noncompliance with any existing written contract or other written agreement with the City, unless such default or noncompliance has subsequently been cured or otherwise resolved to the City's satisfaction or such notice has been withdrawn by the City or otherwise determined by the City or a court of competent jurisdiction to have been issued in error.

*18.8 Compliance with Laws, Licenses and Permits:* With respect to its activities pursuant to this Agreement, Franchisee shall comply with: (i) all applicable laws, rules, regulations, orders, writs, decrees and judgments (including, but not limited to, those of the NY PSC and the FCC) and any other federal, state agency or authority of competent jurisdiction, and (ii) all local laws and all rules, regulations, orders, of the City and of DoITT consistent with this Agreement. Franchisee shall have the sole responsibility for obtaining all permits, licenses and other forms of approval or authorization necessary to construct, operate, maintain, upgrade, replace or repair the System, or any part thereof.

*18.9 Entire Agreement:* This Agreement and the Exhibits and Appendices hereto constitute the entire agreement between Franchisee and the City, and they supersede all prior or contemporaneous agreements, representations, statements or understandings (whether written or oral) of the parties regarding the subject matter hereof.

*18.10 Amendments and Modifications:* Amendments and/or modifications to this Franchise shall not be effective unless mutually agreed to in writing by the parties, and shall be subject to the approval of the NY PSC, to the extent required pursuant to the Cable Law.

*18.11 Captions:* The captions and headings of articles and sections throughout this Agreement are intended solely to facilitate reading and reference to the articles, sections and provisions of this Agreement. Such captions shall not affect the meaning or interpretation of this Agreement. Terms such as "hereby," "herein," "hereof," "hereinafter," "hereunder," and



“hereto” refer to this Agreement as a whole and not to the particular sentence or paragraph where they appear, unless the context otherwise requires. The term “may” is permissive; the terms “shall” and “will” are mandatory, not merely directive. All references to any gender shall be deemed to include all others, as the context may require. Terms used in the plural include the singular, and vice versa, unless the context otherwise requires.

18.12 *Severability*: If any section, subsection, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional by a final order of any court of competent jurisdiction or by, or a final order of any state or federal regulatory authority having competent jurisdiction thereof, such determination shall have no effect on the validity of any other section, subsection, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise, subject to the obligations of the parties as applicable under Section 18.4 above.

18.13 *Recitals*: The recitals set forth in this Agreement are incorporated into the body of this Agreement as if they had been originally set forth herein.

18.14 *NY PSC Approval*: This Franchise is subject to confirmation by the NY PSC. Franchisee shall file a petition for confirmation with the NY PSC within sixty (60) days after the date hereof. Franchisee shall also file any necessary notices with the FCC.

18.15 *Rates and Charges*: The rates and charges charged to Subscribers by Franchisee for Cable Service shall be subject to regulation if and only if such regulation is consistent with applicable law.

18.16 *Publishing Information*: Except as otherwise permitted in this Franchise, the City hereby requests that Franchisee omit publishing information specified in 47 C.F.R. § 76.952 from Subscriber bills.

18.17 *No Third Party Beneficiaries*: This Agreement is not intended to, and does not, create any rights or benefits on behalf of any Person other than the parties to this Agreement.

18.18 *City Official*: The Commissioner is the City official that is responsible for the continuing administration of this Agreement.

18.19 *Holdover*: To the extent required or permitted by NY PSC regulations, in the event Franchisee continues to provide Cable Service within the Franchise Area after the Term of this Agreement, Franchisee shall continue to comply with all applicable provisions of this Agreement, including, without limitation, all compensation and other payment provisions of this Agreement, throughout the period of such continued operation, provided that any such continued operation shall in no way be construed as a renewal or other extension of this Agreement or the Franchise granted pursuant to this Agreement.

18.20 *Investigations Clause*: Franchisee shall comply with the City’s standard “Investigations Clause” to be included in City contracts and agreements pursuant to Section 4(b) of Mayoral Executive Order 16 of 1978, as set forth in Appendix I hereto, and in the event of any failure as described therein shall be subject to the penalties set forth therein.



18.21 *Interpretation:* This Agreement and the provisions contained herein shall not be construed or interpreted for or against any party because that party drafted, or caused that party's legal representative to draft, any of its provisions.

18.22 *Voluntary Execution:* The parties acknowledge that each has read this Agreement, that each fully understands its rights, privileges and duties under this Agreement, and that each enters into this Agreement freely and voluntarily. Each party further acknowledges that it has had the opportunity to consult with counsel of its own choosing in the negotiation or and agreement to the provisions of this Agreement.

18.23 *Execution in Counterparts:* This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which shall constitute a single agreement.

18.24 *Approval of Amendments:* In the event this Agreement is to be amended in any manner which affects the City's interest in an adverse and substantial manner, agreement by the City to such amendment shall only be effective if such amendment is approved by the FCRC.

18.25 *Governing Law:* This Agreement shall be deemed to be executed in the City of New York, State of New York, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the State of New York, as applicable to contracts entered into and performed entirely in the State of New York.

18.26 *Claims Under Agreement:* The City and Franchisee, on its behalf and on behalf of Guarantor, agree that, except to the extent inconsistent with Section 635 of the Cable Act (47 U.S.C. § 555), any and all claims asserted by or against the City arising under this Agreement or related thereto shall be heard and determined either in a court of the United States located in New York City ("Federal Court") or in a court of the State of New York located in the City and County of New York ("New York State Court"). To effectuate this agreement and intent, Franchisee agrees that if the City initiates any action against Franchisee in Federal Court or in New York State Court, service of process may be made on Franchisee either in person, wherever such Franchisee may be found, or by registered mail addressed to Franchisee, at its office set forth in Section 18.6 above, or to such other address Franchisee may provide to the City in writing.

18.27 *Level Playing Field:* The City agrees (to the extent consistent with federal law) that it will not grant any franchise for the provision of Cable Service, nor any amendment(s) to any existing such franchise, if the resulting franchise would not comply with subsections (19) and (20) of Section H of the Resolution (as defined in the third WHEREAS clause of this Agreement), or successor provisions thereto of similar import, or with Section 895.3 of Title 16 of the New York State Code of Rules and Regulations, or successor provisions thereto of similar import. If provisions described in the preceding sentence (as they existed on the Effective Date) are repealed, substantially reduced in their effect or become inapplicable or unenforceable, and if the City grants, renews or renegotiates one or more franchises for the provision of Cable Services which would, in the judgment of Franchisee have been in violation of such provisions in their form as of the Effective Date, then Franchisee may request that the City, acting reasonably, make a determination to such effect. In the event of such a determination by the City, upon



[Acknowledgments]



Franchisee's request the City and Franchisee shall thereafter engage in good faith negotiations to amend this Franchise Agreement in a manner such that the subsequently granted, renewed or renegotiated franchise would have been compliant with the original terms (as of the Effective Date) of the state or local provisions referred to above.

18.27.1 Franchisee and the City agree that the economic and regulatory burdens reflected in the terms of the Franchise granted hereunder when taken as a whole are neither greater nor lesser than those reflected in the terms of the franchise granted by the City to Verizon New York, Inc., executed on May 29, 2008 and approved pursuant to the Certificate of Confirmation in Case No.08-V-0624 (Petition of Verizon New York Inc. for a Certificate of Confirmation for its Franchise with the City of New York) excluding any amendments thereto entered into subsequent to the execution of this Agreement.

AGREED TO THIS 6 DAY OF SEP, 2011.

The City of New York:

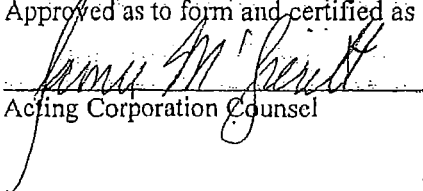
By: 

Deputy Mayor

By: 

Carole Post, Commissioner, DoITT

Approved as to form and certified as to legal authority:

  
Acting Corporation Counsel

Attest:

By: 

City Clerk [City Seal]

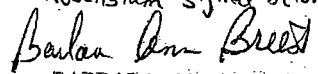
Cablevision Systems New York City Corporation

By: 

[Name, Title]

Lisa Rosenblum, EVP, Gov't & Public Affairs

Lisa Rosenblum signed before me 8-24-11



BARBARA ANN BREEST

NOTARY PUBLIC, State of New York

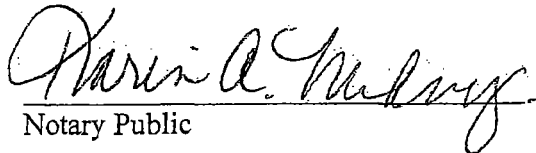
Suffolk County, No. 4956120

Commission Expires September 11, 2013



State of New York                    )  
  )ss.  
County of New York                )

On the 6 day of ~~August~~ <sup>September</sup> in the year 2011, before me personally came Caswell Holloway, to me known, who, being by me duly sworn, did depose and say that he is Deputy Mayor of the City of New York, the entity described in and which executed the above instrument; and that he signed his name thereto in his capacity as Deputy Mayor of the City of New York authorized to thus execute said instrument.

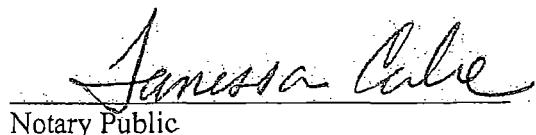


Notary Public

KARIN A. McAVOY  
Notary Public, State of New York  
No. 01MC6042830  
Qualified in Queens County  
Commission Expires June 5, 20 14

State of New York                    )  
  )ss.  
County of New York                )

On the 20 day of August in the year 2011, before me personally came Carole Post, to me known, who, being by me duly sworn, did depose and say that she is Commissioner of the Department of Information Technology and Telecommunications of the City of New York, the entity described in and which executed the above instrument; and that she signed her name thereto in such capacity being authorized to thus execute said instrument on behalf of the City of New York.



Notary Public

TANESSA CABE  
Notary Public, State of New York  
No. 02CA6194771  
Qualified in New York County  
Commission Expires Oct. 14, 20 12



# EXHIBIT B





# APPLICATION FOR EMPLOYMENT

INTERNAL USE  
DATE M/T/W  
LOCATION  
JOB REQUESTED 8P-12A  
RESUME ATTACHED Sat  
6:30P-3A  
DOH 7/19

Cablevision is an Equal Opportunity Employer. All applicants will receive consideration in accordance with federal, state and local law. In order to expedite our review and consideration, please complete this Application as accurately as possible. Incomplete Applications will not be considered. We endeavor to make reasonable accommodations to enable individuals with disabilities to complete this Application, the applicant screening process, and to perform the essential functions of a job. If you need assistance in completing the application or participating in the interview or hiring process, please let us know. If you believe your equal rights have been violated, please contact the appropriate federal, state, or local agencies.

## PERSONAL INFORMATION

NAME: Last Perry First Dorothea Middle Initial R Social Security Number 06258-7436  
Current Address: Number & Street 74 Tapscott Street City BKlyn State NY Zip Code 11212  
Previous Address: Number & Street \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_  
Number of years: 37  
Home Telephone Number (718) 771 7345 Business Telephone Number (917) 3283442 Pager/Cell Phone/Other (917) 3283442 E-mail address Dorothea.perry@optonline.net

Are you currently legally authorized to work in the United States and accept this employment if it is offered by the Company?

Yes ☒ No ☐

If you are hired, you must provide evidence of such authorization in accordance with the Immigration Reform and Control Act of 1986.

Have you reached the legal minimum working age?  
Proof required upon hiring.

Yes ☒ No ☐

Have you ever been convicted of a crime other than a minor traffic infraction?

Yes ☐ No Record ☒

If YES, please give details and dates of convictions including County in which convicted.

A conviction in and of itself will not necessarily disqualify you from being considered for employment. Factors such as the number, nature and time of the offenses, the extent to which they relate to your suitability for employment in the position for which you are applying and any subsequent rehabilitation will be taken into consideration.

## JOB INTEREST

Position Desired Technical Support Technician 2 Date Available Immediate Salary Desired \$18.39 pr. h.

Please indicate below which workdays/hours you would like to be considered for. Please do not indicate the need for any absences due to religious practices during the selected work schedules. We will address such availability after a conditional offer is made.

Day ☐ Evening ☒ Midnight ☐

M-F only ☐ Flexible ☒

FT only ☐ PT only ☒ PT or FT ☐

M, T, W, S (Current Schedule)

NY/CO/FL/GA/LA/MICH/ATX



How were you referred to the Company or its affiliates?

- ☐ Employment Advertisement (Please Name Publication) \_\_\_\_\_
- ☒ Employment Agency (Please Name Agency) Spherion
- ☐ Company Employee Referral (Please Name Employee) \_\_\_\_\_
- ☐ Other (Please Specify) \_\_\_\_\_

Have you ever previously applied for employment with the Company or its affiliates?

Yes \_\_\_\_\_ No ☒ If yes, date(s) \_\_\_\_\_

Location \_\_\_\_\_ Position: \_\_\_\_\_

Have you ever been employed by the Company or its affiliates?

Yes \_\_\_\_\_ No ☒ If yes, date(s) \_\_\_\_\_

Location \_\_\_\_\_

Have you ever worked for a contractor or vendor that has done business with the Company or its affiliates?

Yes ☒ No \_\_\_\_\_ If yes, date(s) and name SpherionLocation Woodbury Branch Position: Technical Support Analyst 2

Are you acquainted with or related to any employee of the Company or its affiliates?

Yes \_\_\_\_\_ No ☒ If yes, please identify person and relationship \_\_\_\_\_

## EDUCATION AND TRAINING (When applicable to job applying for only)

SCHOOL NAME	CITY & STATE	MAJOR COURSE OF STUDY	DEGREE/DIPLOMA/GED* RECEIVED (IF ANY)
High School <u>Murray Bergtraum HS</u>	<u>N.Y., N.Y.</u>	<u>Accounting</u>	<u>Regents Diploma</u>
College <u>Pace University</u>	<u>N.Y., N.Y.</u>	<u>Accounting</u>	<u>B.B.A.</u>
Graduate School			
Business, Technical or Trade School <u>Ace Computer Training Queens</u>		<u>MSIE, CCNA, CCNP</u>	
Other Professional/Accreditations or Licenses: <u>Forensic Examiner (Computer)</u>			

Other Job Related Training Completed: \_\_\_\_\_

Activities, Honors, Offices held that are job related: (You need not identify any religious affiliation or other information which might indicate information about race, religion, religious creed, color, age, sexual orientation or preference, national origin, marital status, gender, ancestry, disability or handicap, veteran status or any other classification protected by federal, state or local law).

\_\_\_\_\_

\_\_\_\_\_

\* Indicate state granting GED.



**EMPLOYMENT HISTORY (Begin with the most recent position)**

List all employment for the past seven years and explain any gaps in such employment: You may include any verifiable work performed on a volunteer basis. You may exclude affiliations or volunteer work which might indicate race, religion, religious creed, color, age, sexual orientation or preference, national origin, marital status, gender, ancestry, disability or handicap, veteran status or any other classification protected by federal, state, or local law. Additional forms available.

May we contact your present employer at this time?

Yes ☒ No ☐

**1. EMPLOYER:**

Business Name

Address

Number/Street

City/State/Zip Code

Cablevision/Spherion

Woodbury, N.Y.

Phone No.

Supervisor

Dates

From:

To:

Dale Russel

Julius Han

Job Title

Reason(s) for Leaving

Level 2 Technical Support Analyst - Still employed

**2. EMPLOYER:**

Business Name

Address

Number/Street

City/State/Zip Code

Collegis/N.Y. Law School

57 North Street

N.Y., N.Y. 10013

Phone No.

Supervisor

Dates

From:

To:

(212) 431 2100 Margaret Perley

Job Title

Reason(s) for Leaving

PC Specialist 2. Reorganization

**3. EMPLOYER:**

Business Name

Address

Number/Street

City/State/Zip Code

Phone No.

Supervisor

Dates

From:

To:

Job Title

Reason(s) for Leaving

**U.S. MILITARY SERVICE**

Branch

Military Specialty

Highest Rank

Special Training/Service School attended, if job related:

Are you prohibited from or limited in your performance of any job duties for our Company by a contract or arrangement of any kind that you have signed?

Yes ☐ No ☒

(If yes, please provide a copy of the agreement to us to evaluate).

You are required to abide by all lawful, enforceable provisions of any contract you entered.



**APPLICANT'S STATEMENT**

Please read the following statements carefully and sign the acknowledgment below.

1. I certify that answers given herein are true and complete to the best of my knowledge.
2. I understand that any false or misleading information given by me or any material omissions made by me, in my Application, during interview(s), or in the Company's pre-employment screening process, may result in my not being hired or later discharged.
3. I authorize the Company or its agents to conduct such investigation of the information I have provided in this Application or any other information it deems necessary for determining my eligibility for employment with the Company including information about my character, background, creditworthiness, general reputation, personal characteristics, or mode of living. I agree to indemnify and hold the Company harmless against any liability which may result from making such investigation.
4. I understand that this Application is not a contract of employment nor is it intended to be a contract of employment. I understand that if I am offered employment and I accept, I will be an "employee-at-will," having no specified term, and whose employment may be terminated at any time with or without notice, cause, or liability. I also understand that this aspect of my employment may not change absent an individual written agreement signed by both me and a Company officer, director or authorized designee.
5. I understand that, if hired, I am required to abide by all rules and regulations of the Company and that I will be responsible for the care and return of any equipment or other Company-owned property issued to me during my employment. I also understand that the Company and its benefit plan administrators retain the maximum discretion permitted by law to interpret, administer, change, alter, amend, supplement, or discontinue any policy, procedure, or benefit.
6. I will be able, if hired, to certify that I am authorized to work in the United States of America and understand that in accordance with the Immigration Reform and Control Act of 1986, I will be required to provide timely documentation of identity and employment eligibility.
7. I understand that the Company desires to provide a "substance abuse free" workplace. I understand that as an applicant I am subject to the Company's pre-employment substance abuse policy and that if hired I will be subject to additional Company policies regarding substance abuse. Furthermore, I understand that as a condition of employment, I will be required to present myself at a time and place directed by the Company for a pre-employment drug test to determine my illegal or unauthorized use of drugs. I acknowledge that if I refuse to submit to such a test or test positive, I will become ineligible for further consideration for employment with the Company, in accordance with the Company's pre-employment drug testing policy.

Applicant's  
Signature

Full Legal Name

Date

Date Signed

The Company is committed to a policy of nondiscrimination in its employment and personnel practices. Applicants are considered for all employment without regard to race, color, religious creed, religion, citizenship, sex, national origin, ancestry, genetic predisposition or carrier status (ie: sickle cell trait, Cooley's anemia or Tay-Sachs disease or atypical hereditary cellular or blood trait), age, marital, familial, or veteran status, liability for service in the armed forces, learning disability, affectional or sexual orientation or preference, past or present history of physical or mental disability (including mental retardation) or any other characteristic protected by federal, state or local law.

Thank you for taking the time to complete our Employment Application.

This Employment Application will only be valid for 90 days from the date of the Application. If you wish to be considered for employment subsequent to that date, a new Application must be completed.



# EXHIBIT C





## CORPORATE POLICIES AND PROCEDURES

May 24, 2012 <i>(Effective)</i>	N/A <i>(Supersedes)</i>	Page 1 of 5 <i>(Page)</i>	2.97 <i>(Number)</i>
SUBJECT: CONFLICTS OF INTEREST POLICY			

**SCOPE:** All Companies.

**PURPOSE:** This Policy provides further guidance on conflict of interest situations.

### 1.0 OVERVIEW

A conflict of interest generally refers to a situation where an employee's personal interests, whether financial or otherwise, including that of their immediate family, is or appears to be in conflict with the Company's best interests. If such a conflict exists, it can be difficult for the employee to fulfill his or her job responsibilities in an objective and optimal manner. Every business decision should be made in the best interests of the Company and not for any employee's own personal gain or advantage. Accordingly, avoiding conflicts of interest is critical to the proper operation of the Company. Not surprisingly, this topic is a centerpiece of the Company's Code of Business Conduct and Ethics, albeit in more summary form than this Policy.

Conflicts of interest mainly arise in two contexts: activities outside the work place and conduct inside the work place. The Company has developed this Policy to provide employees with further guidance on when conflicts of interest may exist, and how to manage such conflicts in both contexts. This Policy, of course, cannot identify all situations in which conflicts of interest may arise. Therefore, employees who have concerns regarding conflicts of interest should disclose and discuss the situation with their supervisors, who should consult with Human Resources, Compliance Support and the Legal Department as needed. Difficult or sensitive conflict of interest issues should always be escalated to the VP, Compliance Support, SVP, Associate General Counsel & Assistant Secretary, or SVP, Associate General Counsel, Litigation, Employment and Compliance Support.

**2.0 DEFINITIONS.** For purposes of this Policy, the term below has the following meaning:

**2.1 Company Resources** means Company time, records (hard copy and electronic), equipment, telephones, supplies, computer systems (including but not limited to internal and external email systems, Intranet and Internet access, desktops, PDAs, laptops, smart phones, etc.), staff, vehicles, information (including but not limited to confidential or sensitive information), or any other Company-owned asset.

### 3.0 PERSONAL ACTIVITIES OUTSIDE THE WORKPLACE.

**3.1 General Rules.** Many employees are involved in various personal activities outside the workplace, such as charitable, political or community activities, serving on the board for an outside organization (in the employee's personal capacity and not at the request of Cablevision), holding a



Any Questions?  
Call Compliance Support  
Tele. # 516-803-2898





## CORPORATE POLICIES AND PROCEDURES

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<b>SUBJECT: CONFLICTS OF INTEREST POLICY</b>			

second job, or similar situations (“Personal Activities” or “Personal Activity”). Employees are free as a general matter to pursue Personal Activities provided that such Activities:

- (1) Are conducted on the employee’s own time;<sup>1</sup>
- (2) Do not involve the use of Company Resources;<sup>2</sup>
- (3) Do not create the impression that the employee is engaged in Personal Activities as a Company representative or is in any other way acting on the Company’s behalf;
- (4) Do not impair or otherwise interfere with the employee’s ability to perform his or her job for the Company at his or her optimal level (e.g., the employee takes a night-shift job that impairs the employee’s ability to perform his job for the Company during the day);
- (5) Do not cause injury to the Company’s reputation (e.g., the employee engages in conduct that publicly embarrasses the Company); and
- (6) Do not compromise the employee's obligation to act in the best interests of the Company (e.g., taking a second job as a strategy consultant for a direct competitor).

When the Personal Activity involves outside supplementary employment, the best practice is always to disclose and discuss the employment opportunity with a supervisor. With regard to other types of Personal Activities, if an employee faces any of the issues identified in the General Rules, that employee should disclose and discuss the situation with his or her supervisor. In addition, any especially sensitive or difficult conflict of interest issue should always be escalated to the VP, Compliance Support, SVP, Associate General Counsel & Assistant Secretary, or SVP, Associate General Counsel, Litigation, Employment, and Compliance Support.

### 3.2 Additional Guidance on Certain External Activities.

#### 3.2.1 Corporate Opportunities.

On occasion, employees may discover or learn about business opportunities they would like to pursue on their own but that may also be of interest to the Company (“Corporate Opportunity” or “Opportunity”). If the employee discovers or learns of an Opportunity that is related to the

<sup>1</sup> Incidental use of Company time is generally permissible.

<sup>2</sup> Incidental use of Company resources (e.g., occasional phone calls or emails) is generally permissible.



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## CORPORATE POLICIES AND PROCEDURES

May 24, 2012 (Effective)	N/A (Supersedes)	Page 3 of 5 (Page)	2.97 (Number)
SUBJECT: <b>CONFLICTS OF INTEREST POLICY</b>			

Company's businesses and may be of benefit to the Company, that employee has a duty to disclose the Opportunity to the Company. That said, if and when the Company declines the Opportunity (and formally advises the employee of such) the employee is then free to pursue the Opportunity provided of course the employee follows the General Rules. Employees with questions should discuss the situation with their supervisor, who should in turn consult with appropriate senior executives and the Legal Department as needed.

**3.2.2 Political and Public Policy Activities.** Employees are free to engage in outside political or public policy activities, like any other outside activities, so long as such activities are conducted consistent with the General Rules. It can be inconsistent with the General Rules to engage in outside political or public policy activities that are directly contrary to the Company's interests. (For example, it would be a conflict for an employee to lead a public advocacy campaign calling for significantly increased regulation of cable companies that would hurt the Company). Accordingly, employees should be careful to disclose and discuss with their supervisors any political or public policy activities that may be contrary to the Company's best interests. Moreover, before an employee seeks part-time elected or public office, the best practice is always to disclose and discuss the opportunity with his or her supervisor, who should then consult with the Government Affairs Department. For more information, see the Government Communications Policy.

**3.2.3 Investments in Other Companies.** While employees are generally free to invest their money as they choose, employees should be mindful that investments can also create conflict situations. (For example, it may well be a conflict for an employee to invest significant sums of money in one of the Company's direct competitors.) Ownership of stock through a mutual fund or other similar type of investments does not ordinarily create a conflict of interest. As always, if an employee has a question whether a particular investment raises a conflict of interest, he or she should disclose and discuss it with his or her supervisor, who should in turn consult with Human Resources and the Legal Department. See also the Insider Trading Policy.

## 4.0 ACTIVITIES INSIDE THE WORKPLACE.

Conflicts of interest can also arise in the context of workplace responsibilities. Below is a discussion of a few particular situations that arise from time to time. The list is not exhaustive, and employees should disclose and discuss potential conflicts of interest with their supervisors, who should in turn discuss with Human Resources, Compliance Support and the Legal Department as needed, who will further escalate as appropriate.



Any Questions?  
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## CORPORATE POLICIES AND PROCEDURES

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SUBJECT: CONFLICTS OF INTEREST POLICY			

### 4.1 Compensation for Cablevision Directed Board of Director Roles with Outside

**Organizations.** On occasion, employees may be asked by the Company to sit on a board of directors or an advisory board of an outside organization as the Company's representative. This is different from serving on a board in an employee's personal capacity outside of work; such situations are governed by the General Rules in Section 3.1. The conflict of interest can arise if the employee is offered additional compensation for work on such outside board. Employees are required to disclose such offers of compensation to their supervisors, who should then consult with the Compensation and Benefits group, as well as the Tax and Legal Departments.

**4.2 Gifts or Entertainment Received from Suppliers, Vendors and Other Third Parties.** The receipt by Company employees of gifts or entertainment from suppliers, vendors and third parties can obviously raise the potential for conflicts of interest. See the Company's Gift and Entertainment Policy for further guidance.

**4.3 Business Opportunities with Close Friends or Family Members.** In connection with Company business, employees may on occasion consider doing business with close friends or family members. Generally speaking, there is nothing wrong with the Company doing business with individuals or organizations with which an employee has a personal connection so long as the connection is disclosed and discussed in accordance with this Policy. Where appropriate, an employee may need to remove him or herself from the decision-making process. Therefore, employees who have a close personal relationship with an individual or organization with whom the Company is considering doing business should advise their supervisor, who should consult in turn with Human Resources, Compliance Support and the Legal Department.

**4.4 Related Parties Transactions.** On occasion, the Company may want to engage in transactions with what the securities laws refer to as "related parties," which include but are not limited to members of the Company's Board of Directors, executive officers of the Company and owners of 5% (or more) of Company stock, etc. Such potential conflict situations are governed by the Transactions with Related Parties Policy. An employee managing such transactions should review that policy to ensure that the Company is in full compliance, and consult with the Legal Department as needed.

## 5.0 OTHER RELATED POLICIES.

This Policy is not intended to replace any existing Corporate or Business Unit policies, procedures or required approvals, including for example:



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**CORPORATE POLICIES AND PROCEDURES**

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SUBJECT: CONFLICTS OF INTEREST POLICY			

- The Code of Business Conduct and Ethics
- Confidential Information Policy
- Gift and Entertainment Policy
- Government Communications Policy
- Transactions with Related Parties; Transactions with Madison Square Garden Company and AMC Networks, Inc.
- Use of Information and Systems Policy



Any Questions?  
Call Compliance Support  
Tele. # 516-803-2898



**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK**

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JAMES G. PAULSEN  
Regional Director of Region 29 of the  
National Labor Relations Board,  
for and on behalf of the NATIONAL  
LABOR RELATIONS BOARD,

Petitioner/Appellant,

v.

CSC HOLDINGS, LLC and  
CABLEVISION SYSTEMS CORP.  
Respondent/Appellee.

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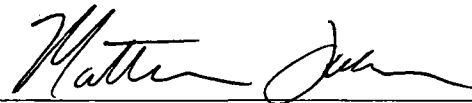
2:15-CV-07054-DRH-AKT

**NOTICE OF APPEAL**

Notice is hereby given that Petitioner National Labor Relations Board appeals to the United States Court of Appeals for the Second Circuit from the final order entered on March 8, 2016, denying the Board's petition for a preliminary injunction under § 10(j) of the National Labor Relations Act, 29 U.S.C. § 160(j).

Dated at Brooklyn, New York this 14<sup>th</sup> day of April, 2016.

Respectfully submitted,



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Matthew A. Jackson  
Counsel for Petitioner  
National Labor Relations Board, Region 29  
Two MetroTech Center, Suite 5100  
Brooklyn, NY 11201



## **CERTIFICATE OF SERVICE**

I hereby certify that on June 10, 2016, I electronically filed the foregoing Joint Appendix, Volumes I, II, III, IV, and V with the Clerk of the Court for the United States Court of Appeals for the Second Circuit by using the CM/ECF system. All participants in the case are registered CM/ECF users and will be served by the appellate CM/ECF system.

Respectfully submitted,

s/ Jamison F. Grella  
Attorney

Dated at Washington, D.C.  
This 10<sup>th</sup> day of June 2016